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No. 216

REPORTS OF CASES

IN THE REIGNS OF

Hen. VIII. Edw. VI. Q. Mary, and Q. Eliz.

TAKEN AND COLLECTED BY

Sir JAMES DYER, Knt.

SOME TIME

CHIEF JUSTICE OF THE COMMON PLEAS.

NOW FIRST TRANSLATED,

WITH ADDITIONAL REFERENCES TO THE LATEST BOOKS OF AUTHORITY,

MARGINAL ABSTRACTS OF THE POINTS DETERMINED IN EACH CASE,

AND AN

ENTIRE NEW INDEX TO THE WHOLE,

BY

JOHN VAILLANT, *M. A.*

OF THE INNER TEMPLE, BARRISTER AT LAW.

To this EDITION a LIFE of the AUTHOR is prefixed;

AND

From an ORIGINAL MANUSCRIPT in the LIBRARY of the INNER TEMPLE several NEW CASES of his are introduced in the NOTES.

PART III.

DUBLIN:

PRINTED FOR MESSRS. P. BYRNE, J. MOORE, W. JONES, J. RICE, AND H. WATTS.

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Trinity Term, [252. a.]

8. Queen Elizabeth.

Stebling *v.* ———.

Eedr.

The incumbent of a chantry made a leaſe in the time of H. 8. which the patron who had only an eſtate tail in it confirmed. After the diſſolution by 1. E. 6. c. 14. the King may avoid this leaſe, unleſs a diſcontinuance or bar of the entail be ſhewn.

(95) ONE who was chaplain of a chantry or free chapel which was a donative, made a leaſe for the term of ninety-nine years in the 28th year of *H.* 8. and the patron or donor who was ſeiſed of a manor, to which the donation or patronage belonged, only in tail, confirmed the leaſe: and afterwards he had iſſue, and died; and then came the act which diſſolved the chantries and chapels in 1. *E.* 6. [c. 14.] by which they are given to the King in fee-ſimple, with a ſaving of all leaſes and intereſts &c. except of the patrons and donors and their heirs, and the incumbents and their ſucceſſors: Whether the King after the death of the leſſor may avoid this leaſe, was the caſe in evidence to the jury on the iſſue *non culp.*' And this depended upon the conſtruction of theſe words of the ſaving, *s.* " All " ſuch leaſes which they or any of them lawfully have or " of right ought to have, or might have had in ſuch like " manner, form, and condition, to all intents, reſpects, " conſtructions, and purpoſes, as if the act had never been " had or * made, and as though the chantries &c. had " continued and remained in their full being." (96) And here no man may avoid the leaſe, for the incumbent himſelf who was the leſſor could not avoid it, nor could any ſucceſſor now; and the iſſue in tail could not; and by the ſame ſtatute the tail is bound for ever. But the better opinion was, that the King may avoid the leaſe as well as an incumbent might have done: and ſo was the verdict found accor-

Dy. 337. b. B.N.C 101. Hob. 243. F. Grants, 61. Litt. 122. a 1. Ro. Ab. 480. Bridg. 95 3. Leon. 156. 1. Co 47. Dy. 156. 1. Co. 47. Dy. 231.

* [252. b.]

Dy. 51. b. 239. 240. a. 252. 7. Co. 8.

1. Co. 48.

accordingly. But afterwards, and before any judgment, a diſcontinuance, and bar of the entail (of the manor, and the advowſon by fine levied with proclamations in *Mich.* Term in the 30th year of *H.* 8. and a new entail taken back &c.) was ſhewn to the Court; wherefore no judgment was given for *Stebling*, leſſee of the King.

1. Co. 51. [3. Bac. Ab. 385. 1. Lev. 112. 2 Ro. Rep. 9. Co. Lit. 300. b.]

Knyveton's Caſe.

The King grants the wardſhip of the heir, and of all lands deſcending to him from *A.* his father, to *B.* Afterwards *A.* conveys his lands to himſelf for life, remainder to his wife in tail, remainder to their right heirs. The huſband and wife make a leaſe, and join in a recovery, both vouching the common vouchee. The heir may avoid this leaſe, as the wife had nothing in the freehold at the time of the recovery: and *B* is entitled only to the body, and marriage of the heir, for he is in of the entail, and hath nothing by deſcent, as heir to his father.
Co. Lit. 78. a. 6. Co. 77. Dy. 178. 2. Ro. Ab 493. 39. H. 6. 48. b. Gould. 27. 19. H. 6. 62, 63. 30. H. 6. Grant, 61. Br. Patents, 74. Perk. 9. cont' 1. Inſt. 1. b. Cro. Car. 389. 6. H. 7. 5 a. 1. Mar. 102. a. 19. H. 6. 46. a. 21. E. 4. 46. b. B N. C. 193. 18. 38 E. 3. 28. 26. 3. Co. 5. b. 6 b. 10. Co. 46 a. 3 Cro. 6. 670. Plow. 436. 515. 11 El. 279 a. Plow. 17. a. Dy. 290 367. 181. a. 38. E. 3. 5 a. Voucher, 55. [Cruiſe on Recoveries, 296. See 14. Geo. 2. c. 20 §. 1.]

(97) OUR Lady the preſent Queen granted the cuſtody of the land and of the heir of *Matthew Knyveton* for one hundred and twenty pounds to *William Cordel*, Knigt, if it ſhould happen that *Matthew* die, his heir within age. And afterwards the ſaid *M. K.* made a conveyance of his land to certain perſons in fee to the uſe of himſelf for the term of his life without impeachment of waſte, remainder to his wife *Elizabeth* by name in tail, remainder over to the right heirs of him and his wife. After which conveyance the ſaid *Matthew* and his wife made a leaſe for forty years, and afterwards ſuffered a common recovery with the common voucher over, which was executed by a writ of ſeiſin; and afterwards the huſband died, having iſſue a ſon by his ſaid wife being within age, and then the wife died: and all theſe matters are found by office. 1ſt, Whether the heir ſhall be in ward to the ſaid *W. C.* or to the Queen, notwithſtanding the ſaid grant in the life-time of the father (admitting the grant in the life-time of the father to be good), inaſmuch as now by reaſon of the ſaid conveyance the ſon is become heir in tail to his mother, and of the fee-ſimple expectant alſo, and hath nothing by deſcent as heir to his father. (98.) Alſo, Whether the leaſe for years be avoidable by the ſon notwithſtanding the recovery, for the wife had nothing in the freehold at the time of the recovery, but only in remainder as above: and for this cauſe the leaſe was holden void, and according to this the order was made. But for the other caſe, it was holden by all the Counſel in the court except the Attorney, that the grantee ſhall have the *(a)* wardſhip of

(a) Warliſhip, with the other conſequences of feudal tenure, was aboliſhed by 12. *Car.* 2. c. 24.

the

the body, and marriage of the heir which was veſted immediately after the death of *Matthew*, and this by the ſaving in the acts of 32. [*H.* 8. c. 1.] and 34 & 35. *H.* 8. [c. 5.] of title of Ward to the King, where the diſpoſition of the eſtate executed in the lifetime of tenant *in capite* is made to the wife or children, &c. But * if the conveyance had been made over to ſtrange blood, then it would be otherwiſe. And note, that it was ſaid by *Kayleway*, that it had always been holden by the opinion of the Court there, that the children of the children of the deviſor or diſpoſer ſhould be intended as ſtrangers, and ſtrange blood &c. But for the third part of the land reſerved by the ſaving, the patentee above ſhall not have it, becauſe the words in his patent do not ſerve in this caſe, for the words were, " *the cuſtody of* " *all lands and tenements deſcending or belonging to the afore-* " *ſaid heir as ſon and heir of the ſaid Matthew*;" and this is not in the caſe above, for he had nothing of his father, but only as heir to his mother; Wherefore &c.

6. Co. 77. 1. Inſt. 78.

* [253. a.]

Dy. 181. pl. 51. 286.

[See 4 Term Rep 749. 3 Term Rep. 372. Powel on Powers, 346. 349]

6 Co. 77. a. 15.

Vernon *againſt* Gatacre.

(99) *HUMPHRY SWINNERTON*, of the county aforeſaid, Eſq. had two daughters and heirs, the eldeſt married to *H. Vernon*, the other to *William Fitzherbert*, and he made partition in his lifetime of his lands between his daughters and their heirs; and becauſe he allotted to his eldeſt daughter the moiety, and more to come in poſſeſſion after his death, and much of the other moiety was in the jointure of *Caſſandra* his wife, he intended that the other moiety ſhould be charged with a rent during the life of *Caſſandra*; which rent was afterwards conveyed by fine *ſur grant et render* to the ſaid *William Fitzherbert*, *habendum* to him and his aſſigns during the life of *Caſſandra &c.* and if it ſhould happen &c. that then it ſhould be well lawful for the ſaid *William Fitzherbert* and his heirs, during the lifetime of the ſaid *Caſſandra*, to diſtrain &c. And afterwards *William Fitzherbert* by his laſt will aſſigned and deviſed the ſaid rent to his wife, and died in the lifetime of the ſaid *Caſſandra*: and, Whether the rent be determined, or not, was much in diſpute firſt at common law, and afterwards in the Chancery, between *Henry Vernon* and one *Gatacre*, who had married

STAFFORD.

Grant of a rent to *F.* by fine, " *habendum* to " *F.* and his *aſſigns* during the life of *C.* and " if it be in arrear, that " it ſhall be lawful for " *F.* and his *heirs* to diſtrain during the life " of *C.*" This clauſe of diſtreſs gives *F.* a fee determinable on the death of *C.*

[14. Vin. Ab. 138.]

3. Keb. 487.

8. H. 4. 14. b. by Gaſcoine.

Co 140. b. 9. 12. 7. 6. a.

27. H. 8. 10 b. 1. Inſt. 41. b. 388. a.

the widow of the ſaid *William Fitzherbert*. (100) And becauſe that the words "*and his heirs*" in the clauſe of diſtreſs in the fine were eraſed out of the indentures of the chirograph which remained with *H. Vernon*, the matter was referred to the decree of JAMES DYER, *Chief Juſtice of the Common Bench*, who after view and ſearch made of the foot of the fine remaining in the cuſtody of *J. Lennard*, *Cuſtos Brevium*, and of the note remaining in the cuſtody of *Gardener* the Chirographer, it fully appeared, that the words "*and his heirs*," without any eraſure, were in the fine; wherefore in his opinion the rent is not determined during the * life of *Caſſandra*, although in the *habendum* of the fine there is no mention *of heirs*, but only the word *aſſigns*, for it ſufficeth if it be in the clauſe of diſtreſs, according to *Quintine's* Caſe, 26 *Aſſ.* [pl. 38.] and in error 8. *H.* 4. [19. b. pl. 5.] And then *Fitzherbert* had in this caſe a fee-ſimple determinable on the death of *Caſſandra*, and the matter was ordered accordingly.

Lit. 169. a. 8. H. 4. 18. b.

Mo. 664. Plow. 556. b. 33 Aſſ. 4. Plow. 273. Dy. 270. 196. 321 b. 21. H. 8. 14. 17 E. 3. 25. 1 Co. 140. 10. Co. 98. 1 Bulſt. 135. Mo. 878. 1 Saund. 261.

* [253. b.]

[x Inſt. 148. a.]

(100) The Biſhop of *Litchfield* granted to *Alſton* divers loads of eſtovers out of his wood of *D.* to be burnt in his houſe of *S.* and that he and his heirs might take that fuel out of the ſaid wood at certain times of the year; and adjudged that this is only an eſtate for the life of the grantee, becauſe the word *heirs* is not in the grant, although it is in the ſequel of the deed. And this was *Lord Paget's Caſe*, by LORD ANDERSON [in his Rep. 259.]

M. 44, 45. *Eliz.* POPHAM ſaid, that rent granted to one and his heirs (*a*) for the life of *J. S.* ſhall not be deviſable by the ſtatutes of 32 & 34. H. 8. for it is no fee, by him; and ſaid, that the greater part of the Judges were of his opinion: but GAWDY and FENNER *e contra*. [Cro. Eliz. 805.]

(*a*) By 29. *Car.* 2. c. 3. § 12. eſtates *pur autre vie* are deviſable by will in writing ſigned by three witneſſes, and if no deviſe be made thereof ſhall be chargeable in the hands of the heir, if he takes as ſpecial occupant or by deſcent; and if there be no ſpecial occupant, it ſhall be aſſets in the hands of executors or adminiſtrators of the grantee, and by 14 *Geo.* 2. c. 20. § 9. ſhall be diſtributed as perſonal eſtate. See Co. Lit. 41. b. notes (4) & (5). 4. Term Rep. 229.

A leſſee covenants and is bound to incloſe after felling timber: in debt on the bond, he pleads that he did not fell: replication, two acres felled and no incloſure: the defendant's rejoining that he did incloſe, is a departure and jeofail.

Co. Lit. 304. a. 28. H. 8. 31. b Dy. 193 a. 217 371. Plow. 8. 165. 7. H. 8. Cro. 175. 6. H. 7. 4.

(101) A LEASE was made by indenture for years without impeachment of waſte, and one covenant was, that the leſſee at every falling of wood ſhould make a fence to ſave the ſpring; and he was bound for the performance of the covenants. And in debt on bond he pleaded the indenture, and to the ſaid covenant pleaded that he had not felled any wood &c. And the plaintiff ſhewed the felling of two acres of wood, and that the defendant did not make any fence to ſave the ſpring: and the defendant rejoins, that he made a fence &c. and of that he puts himſelf upon the country; and

and the aforeſaid plaintiff does the like, therefore let twelve &c. And this was holden a jeofail and departure; and the jury at the bar diſcharged for this in the Bench.

[Bac. Ab. Pleas (L). 2 Wilſ. 96. 4. Term Rep. 504. 585.]

Cecil's Caſe.

(102) A LEASE was made by indenture to one *W. Cecil* the elder for the term of forty-one years if he ſhould ſo long live; and if he ſhall die within the aforeſaid term, then *Elizabeth*, the wife of the aforeſaid *W.* ſhall have and hold all the premiſſes for the reſidue of the ſaid term complete if ſhe ſhall ſo long live; and if ſhe ſhall die within the aforeſaid term, then *W. Cecil*, the ſon of the aforeſaid *W.* ſhall have and hold all the premiſes for the reſidue of the aforeſaid term not completed, if *ut ſupra*. Whether theſe limitations or remainders are good, or not, was the queſtion. And by the opinion of CATLYN and DYER the remainders are void, becauſe the term is determinable upon the life of *W. C.* Alſo the reſidue of the ſaid term cannot remain &c. See *Colthurſt's Caſe, Eaſt.* 4. *E.* 6. fol. [23. of *Plowd. Com.*]

Leaſe for years "if *C.* "ſo long live; but if "he die within the "term, the reſidue "thereof to *D.* if ſhe "ſo long live; but if "ſhe die, then to *E ut* "*ſupra*:" theſe limitations over are void, as the term expires at the death of *C.*
1. Co. 55. Co. Lit. 239. 6 E 6. 74. b. Plow. 520. b. 83. 516. 24. 4. Mar. 150. a.
3. Leon. 195. Dy. 7. 277. b. 358. b. 2 Roll. Ab. 415. 37. H 6. 30. 10 Co. 98. Mo 479. 1 Co. 153. 4 Co. 153. [Shep. Touch. 272. but 1. Burr. 282. contra.]

(102) *M.* 32, 33. *Eliz. Rot.* 1832. in *C. B.* between *Green* and *Edwards*, [Cro. Eliz. 216. Mo. 297.] it was adjudged a void remainder.

(103) THE Juſtices of each Bench were aſſembled in this Term for the framing and ordering a certificate of *auterfoits convict* to be objected againſt a felon who prayed his clergy, *ſ.* Whether the Juſtices before whom &c. ſhould write to the Clerk of the Crown of the King's Bench to have the certificate of the former conviction in their own names, or by writ in the name of the Queen under the *teſte* of the Juſtices &c.—And becauſe the words of the ſtatutes 34 & 35. *H.* 8. c. 14. are, that the Juſtices ſhould write to the Clerk of the Crown, the better opinion *pro hâc vice* was, that the Juſtices ſhould write in their own * names &c. But where Juſtices of one county or circuit (where an acceſſary is to be arraigned for felony committed by a principal in a foreign country) write to the Juſtices of the foreign county or circuit to be certified of the conviction, and attainder, or diſcharge of the principal, the better form is to write

Where the juſtices write to the clerk of the crown for the certificate of *auterfoits convict* under 34 & 35. H. 8. c. 14. they ſhall do it in their own names. But Judges on the circuit in one county ſending to Judges in another for the certificate of a principal's attainder to arraign an acceſſary, ſhould do it by writ in the king's name.
Dy. 50. Stamf. 136 a 7. [2. Hawk P. C. 459.]

* [254. a.]

write by writ, and not in their own names, becauſe Juſtices write to Juſtices, where the ſtatute of *E.* 6. in the 2d and 3d year, c. 24. hath ſimilar words to the above.

If a wife procure the murder of her huſband by a ſtranger in her abſence, it is not petit treaſon in her, but ſhe is acceſſary to murder only, for the crime is but murder in the principal.
Stamf. 10. Poulton, 124. 16. Eliz. 332. a. 40. Aſſ. 55. 1. R. 3. 4. a 3. Mar. 128. a. Crompt. 15, 16.
[1. Hawk. P. C. 132. 2. Hawk. P. C. 445.]

Such a caſe happened in the 15th year of the preſent Queen between the Terms of *Eaſter* and *Trinity*. Upon the indictment and arraignment of the two wives of *Saunders* of *London* and *Drury* for the death of *Saunders* in *Kent*, whereto the women were acceſſaries in *London*, and there arraigned as acceſſaries before the Mayor and other commiſſioners of *oyer & terminer*; (and *Browne* who was the principal was indicted in *Kent ſuper viſum corporis*, and the indictment removed into *B. R.* where *Browne* on his own confeſſion was condemned in *Eaſter* Term, and executed in *Smithfield*, and afterwards hanged in chains at *Shooter's Hill* in *Kent*, near the place where the murder was committed) the Juſtices of *oyer & terminer* ſent for the record to SIR ROBERT CATLYN, *Chief Juſtice*, Keeper of the Records of the Queen's Bench. And *quære* the form thereof. And in *Whitſun Week* the women were both executed in *Smithfield* alſo, by hanging only, and not by (*a*) burning the wife of *Saunders*, becauſe, although ſhe was acceſſary to the death of her huſband, yet the principal was no traitor, but a murderer only. Note 40. *Lib. Aſſ.* p. 25. *ſimile.*

(*a*) By 30 *Geo.* 3 c. 48. the puniſhment of burning women convicted of petit treaſon is changed to hanging as in common caſes of murder, and in caſes of high treaſon they are only to be drawn to the place of execution and there hanged.

Crompton's Caſe.

After the King's ſilver duly entered, if the conuſee die, the fine ſhall be engroſſed, but without the proclamations required by 4 H. 7. c. 24 for the party cannot now elect to have it under that ſtatute.
4 Leon. 96.
[See 3 Cro. 693.]
Dy. 86. 89. 195. 2 Cab. 19 El. 355. a. Plowd. 434. Supra, 246 a. 7. El. 231. b. 11 El. 281 a. 3. Co 86. b. 4 Co 72. a.

(104) *MEM.* That a fine was acknowledged of *Hilary* Term in the 20th year of *H.* 8. to *Peter Crompton*, ſon and heir of *Sir William Crompton*, Knight, of lands and tenements in *Olney Weſton* and other vills in the county of *Bucks*, by *dedimus poteſtatem* directed to *John More* Knight, Juſtice; but the writ of *dedimus poteſtatem* made no mention of the county, as is uſual: and the writ of covenant and *dedimus poteſtatem* with the concord was certified, and the King's ſilver entered in the ſame Term; but the fine was not engroſſed, but remained in the Chirographer's office. And now in this Term application is made by *H. Crompton*, ſon and heir of *Peter*, to have this fine engroſſed with proclamations.

tions. And becauſe a *formedon* is pending now for part of the land, *Curia adviſare vult*. And afterwards, *s.* in *Michaelmas* Term, it was holden by the Court, that the fine ſhould be engroſſed, but that the proclamations ſhould not be entered nor engroſſed, becauſe the parties to the fine are dead to whom by the ſtatute of 4. *H.* 7. [c. 24.] election is given to have the new form of the fine according to the ſtatute, or the old; and here is no party to make the election.

West's Preſidents Fines, fo. 55. ſect. 173.

[Cruiſe on Fines, 34. 44.]

Michaelmas Term,

[254. b.]

8. and 9 Queen Elizabeth.

Bolle *againſt* Nyſeham.

Mich. 7. & 8. Eliz. Rot. 1720

Debt for rent againſt the deviſee of a termor, and demurrer, 1ſt, Becauſe plaintiff did not ſhew the executors, and that defendant entered with their conſent. 2dly, For not ſaying expreſsly that they entered by virtue of the deviſe. [Bend. 151. S. C.]

(1) IN DEBT the plaintiff declared that he was ſeiſed in fee of certain lands, and by indenture leaſed them to one *A. B.* for a term of years rendering rent, whereby the leſſee became poſſeſſed, and being ſo poſſeſſed made his will (*a*) *at &c. and by the ſaid will* willed and bequeathed the whole term and his intereſt aforeſaid to the defendant, and died; after whoſe death the defendant entered, and became poſſeſſed thereof; and for the rent arrear after the death he brought the action of debt, and did not ſhew in certain that the leſſee made any executors, nor that the defendant entered by the aſſent and licenſe of the executors: and for this cauſe the defendant demurred in law to the declaration. Alſo for that the defendant did not ſay expreſsly, *s.* "*whereby or by virtue* "*of which bequeſt, &c. he entered, &c.*" although he hath the word *poſſeſſed*, yet it may be he entered after the death of the teſtator by force of another title; and ſo ſhall it be the rather intended: and then if the defendant be in of another eſtate, or title than as aſſignee of the leſſee, this action of debt does not lie againſt him for want of privity; Wherefore &c.

Styl. 407.

Gouldſb. 35. 52.

Dy. 272. b. 277. b. 367. a. 16 H. 7. 5. 2. 20. E. 4. 13. b. 9. b. 37 H. 6. 30. a. Perk. 109, 110. Plow. 5. 21. 201. Dy. 118. a. 184 b. 264. a. 5. H. 7. 14. 4 Co. 18. b. 3 Cro. 678. 9 H. 6. 52. 14. H. 7. 4. Dy. 248. a.

[2 Ld. Raym. 800. Dougl. 457—461.]

(*a*) Theſe words in Italics are omitted in the laſt edit. and in that of 1621, but are in the old one of 1592 and in that of 1672.

Bell

Bell *againſt* the Biſhop of Norwich.

That the preſentee is a haunter of taverns and unlawful games, which are *mala prohibita* only, is no cauſe for the biſhop to refuſe to admit him.

2 Rol. Abr. 355. 5. H. 7. 20. a. 1. Inſt 632. Hob. 296. Gold. 35. 14. H. 7. 28. b. 38. E. 3. 21. 15. H. 7. 7. R. 8. 670. 11. Co. 87. b. [5. Co. 58. a. Watſ. Clerg. Law. 215. 1 Bl. Com 389. Com. Rep. 358]

(2) *BELL* recovered in *quare impedit* the preſentation to the vicarage of *Stoke Nayland* in the county of *Suffolk* againſt the Biſhop of *Norwich*. And upon the *alias* writ to the Biſhop, he returned, that the plaintiff, before the receipt of the writ, preſented to him one *Marcant* his clerk, whom nor by right nor by the eccleſiaſtical law he could or ought to admit, becauſe at the time of the preſentation, and all the time of his commorancy within his dioceſe of *Norwich* he commonly haunted taverns, and other places, and games illegal and prohibited: wherefore, and for divers other like crimes, the aforeſaid *Marcant* was *criminoſus*, and ſo an improper and unfit perſon to be inſtituted into the vicarage aforeſaid &c. And by the opinion of all the Juſtices the return is inſufficient in the matter; for all theſe particular faults ſpecially declared above, are not ſufficient to make the preſentee *criminoſus*, becauſe none of them is ſuch crime as merits a refuſal, for they are not *mala in ſe*, but by prohibition of law &c. Alſo he does not excuſe his not returning the former writ; Wherefore &c.

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*[255. a.]

A foreigner as well as a freeman may deviſe his lands in London by the cuſtom, but not in mortmain without the King's licenſe; nor with ſuch leave but to corporations within the city.

Dy. 273. pl. 13. 30 H. 8. B. N. C. 132. Br. Deviſe, 51. Cuſtome, 7. Co. 8. 129 a. 30. H 8. 132. b. Deviſe, 28. 24. E. 3. 33. a. 71. b. 7. H. 6. 1. Dr. & Stu. 21. 28. Aſſ. 25. 24 Hob. 32. 2. Kebl. 66. 164. 1 Rol. Ab. 556. 2 Ro. Ab. 580. 1 Kebl 618.

[1 Bulſt 192. See the Charter 1 Ed. 3. Laws of Lond. 13. Cro Car. 248. 576. Privil. Lond. 210. And ſee 4. Term Rep. 130.]

*(3) *MEM.* That by the cuſtom of the city of *London* a foreigner as well as a citizen and freeman thereof may deviſe his tenements in *London* which he hath in fee-ſimple to another in fee. And this appears *E.* 11. *H.* 7. [21. a. pl. 8.] from the certifying by *Fitzjames*, Recorder of *L.* in the Bench. But by 45. *E.* 3. fol. 26. ſuch a deviſe cannot be made in mortmain unleſs by a citizen or freeman of the city without licenſe of the King. *Simile* 5. *H.* 7. fol. 10. & 19. and this even to corporations or guilds, or other mortmains, as houſes of religion or ſpiritual corporations within the ſaid city, and not out of it: but *quære* thereof. See who ſhall be called a citizen, 38. *Li. Aſſ.* 12. [pl. 18.]

(4) A MAN

Trin. ult. Rot. 1143.

(4) A MAN made a leaſe for ten years of a tenement, and certain land thereto belonging, in which one had a good eſtate for the term of his life by copy of court-roll. And the leſſor bound himſelf by bond to the leſſee with this condition, *s.* that if the leſſor *ſuffer* the leſſee from year to year during the term quietly and peaceably to have, hold, and occupy the tenement and land aforeſaid, and that without trouble, vexation, or denial of the leſſor, or any other perſon or perſons, that then &c. The leſſee entered upon the copyholder; and afterwards he re-entered, and ouſted the leſſee. Whether the condition be broken, or not, was demurred in law. And by the opinion of all the Court on good conſideration, it ſeems that the condition is not broken; for all the ſequel of the condition depends on the firſt word, *s. ſuffer*, which is a verb paſſive: ſo no act is to be done by the obligor, but only the ſufferance of him, his executors, and aſſigns, notwithſtanding the words, "*and that without trouble &c. or any other perſon*," which have a meaning that the obligee ought to enjoy the leaſe againſt all others &c. But if any procurement or occaſion of the diſturbance be through the obligor, his executors, or aſſigns, then he hath forfeited the bond, &c. And the word *that* is tranſlated into Latin *hoc*, which refers to the word *ſuffer* as it ſeems. See *E.* 17. *E.* 4. [2. b. pl.] 3.

A. is bound to "*ſuffer* "his leſſee to enjoy, "and that without in- "terruption of himſelf "or any other;" a copyholder's entering by an elder title is no breach, unleſs *A.* actually procured the diſturbance.

18. E. 4. 20. b. 1. Ro. Ab. 425, 6. Antea, 30. 205. & 42. 9. Dy. 240. a. 344. Hob. 75. 1. Saund. 58. 59. 4 Co. 80. Plow. 240. 281. 2. Kebl. 201. 2. Ro. Ab. 396. Cro. Car. 166. 495. Winch. 74. 87. 93. Dy. 279. a. [Doug. 43. 1. Term Rep. 671. 1 Hen. Bl. 34. 3. Term. Rep. 587. 4. Term Rep. 617. 620. Shep. Touch. 163.]

(5) A MAN having a benefice with cure to the value of ten pounds or more, takes another benefice with cure, and is inducted into it; now the firſt is void, as if it were by death or reſignation, and this by ſtatute 21. *H.* 8. [c. 13.] but the ordinary is not bound to give notice of this avoidance, by the opinion of the Juſtices of the Bench, becauſe the patron might take notice of ſuch manner of avoidance as well as the ordinary &c. *Simile H.* 18. [*Eliz. poſt.*] fol. 347.

Where a church is void by acceptance of a ſecond benefice, a lapſe may incur without notice to the patron.

7. El. 237. a. 4. Co. 73 b. 79. b. 14. H. 4. 17. a. Dr. & Stu. 116. The patron ſhall take notice of an avoidance by creation or ceſſion. Fitz. al. contra, ſo. 35. [Watſ. Cl. L. 6. 3. Burn. Eccleſ. L. 90, 91. Wood's Inſt. 151. Bul. Ni. Pri. 124. 2. Wilſ. 200. 3. Burr. 1508.

(5) *M.* & *H.* Exchequer Chamber, *Prieſt's Caſe*, [9. Car. Jon. 337, 338. Litt. 288. 302.] that by taking of the ſecond benefice the firſt is not voidable only, but *de facto* void, and that is the reaſon a lapſe ſhall incur upon [without] notice.

Pomeroy

* Pomerey *againſt* Wichehals.

In a writ of intruſion of ward, the marriage unſatisfied, defendant may traverſe the tender, the plaintiff having alleged a tender of marriage. But it ſeems a *valore maritagii* lies without tender. *Tamen quære.*
44 E. 3. 4. 15. 28 E. 3. 92. Gard. 49 14. E. 3. Action ſur le Stat. 16. 17. Br. Forfeiture de Marriage, 7. 18. E. 3 18. Action ſur le Stat. 15. 6. Co. 70. b. B. N. C. 362. Finch, 17. 11. H. 7. 23. a. 22 El. 365. a. 3. Cro. 469. 6 Co. 74. a 5 Co. 126. b. 2. H. 7. 9. a. 7. H. 6. 22. b. 14. Eliz. 306. b 31. Aſſ. 26. Br. Forfeitde Marriage, 3. 41 E. 3. 43. Fulb. 89. 35 H 6. 52 Gard 71. 22. E. 4. 41. a. Dy. 260. b. [Cro. Jac. 66 Cro Car 502 2 Blac. Com. 70. 88 By 12. Car 2. c. 24. the *valor maritagii* is taken away.]

(6) A WRIT of intruſion of ward, the marriage not being ſatisfied, was brought by *Pomerey* againſt *Wichehals*. And the writ and count ſuppoſed a tender of marriage to the defendant when he was within age, without diſparagement; and he refuſing that marriage, intruded himſelf &c. his marriage not being ſatisfied. And the defendant traverſed the tender, and of that he puts himſelf upon the country. And to this plea the plaintiff demurred in law. And by the opinion of the Court, the traverſe is well enough; for the plaintiff has expreſsly ſuppoſed a tender by his writ and count, wherefore he hath given advantage to his adverſary to take the traverſe. Yet by the opinion of WELSHE and BROWNE, a writ *de valore maritagii* lies without tender; but WESTON and DYER doubted, by reaſon of the words of the ſtatute of *Merton*, c. 6. [c. 7.] which are, "*Si hæres pro domino ſuo "ſe noluerit maritare &c.*" *pro domino ſuo* imply a tender: *quære.* See *H.* 40. *E.* 3. [6. b. pl. 12.] iſſue joined in ſuch an action on the refuſal, and that the tender is traverſable. And *M.* 21. *E.* 4. fol. 51. [43. a.] *obiter* in error, agreed by the whole Court, that the tender in this action is traverſable, notwithſtanding the words of the ſtatute, "*Maritagium de mero "jure pertinet &c.*"

Trinity College Caſe.

A deviſe in 4 & 5. Ph. & Mar. to Trinity College Cambridge, is good by 1 & 2. P. and M. which ſhall be favourably expounded.

Jenk. Cent. 6. c. 6. S C. 3 Kebl. 554. Coke, 25. b. Co. Lit. 99. Hob. 123. 135. 2. Brn. 46. 1 Ro. Abr. 556. R. 8. 11 Co. 71. a. Dy 33. pl 12. 1. Kebl. 168. 2. Kebl. 66.

(7) ONE *Allen Clerke* by his laſt will in writing gave certain tenements in *London* in the 4th and 5th years of *P.* and *M.* to the maſters, fellows, and ſcholars of *Trinity College* in *Cambridge*, and to their ſucceſſors for ever, for the finding of certain grammar ſchools, poor ſcholars, &c. And whether the deviſe be good by the ſtatute of 1 & 2 *Ph. & M.* [c. 8. §. 51.] *s.* of deviſe made to ſpiritual corporations, notwithſtanding the acts *de terris ad mortuam manum non ponendis*, or any other acts or ſtatutes to the contrary notwithſtanding. And by the ſtatute 34 and 35. *H.* 8. [c. 5.] of Explanations, which has this parentheſis, *s.* (except bodies politick and corporate) this deviſe is not good; then the deviſe ought to be good by the common law, or by the

the ſaid ſtatute of 1 & 2. *P. & M.* or otherwiſe it is not good. Yet afterwards, *s.* in *Michaelmas Term*, in the 9th and 10th year of the preſent Queen, by the opinion of all the Juſtices of each Bench, and of the Chief Baron of the Exchequer, the deviſe was holden good; and the ſtatute of 1 & 2. *P. & M.* ought to be favourably expounded.

[This ſtat. of 1. P. and M. c. 8. was repealed by 1 El. c. 1. § 2. but now by 43. El. c. 4. a deviſe to a college is good. See 1 Lev. 284. 2 Black. Rep. 1181.]

(8) IN debt againſt one as executor, who pleaded *ne unques executor*, nor did he ever adminiſter as executor, the plaintiff averred that he had adminiſtered divers goods &c. as executor; upon which they were at iſſue, and a ſpecial verdict found, *s.* that the defendant, by virtue of a writ *ad colligend'* granted to him by the commiſſary * of the biſhop of the dioceſe, where the deceaſed died inteſtate, in which alſo there was authority given to ſell and expoſe to ſale ſuch goods of the deceaſed as were of a periſhable nature, and which could not be kept without loſs, and to render an account thereof &c. had ſold ten quarters of grain, called wheat corn, of the goods of the deceaſed, at the Feaſt of *the Annunciation of the bleſſed Mary*, &c. and the proper name of the commiſſary was not expreſſed in the writ; and Whether this was ſuch an adminiſtration in law by which the defendant ſhould be charged as of his own wrong the Jury doubted, and prayed the advice and diſcretion of the Court, &c. And the opinion of the Court was, that this was an adminiſtration; and the ordinary himſelf had no ſuch authority to ſell any goods, although there was danger of their periſhing, &c. And alſo the writ *de colligendo* ought to expreſs the proper name of the commiſſary or ordinary: and ſo the common courſe was ſtated to be by the civil doctors: and yet the Court would adviſe till the next Term, at which Term judgment was given for the plaintiff.

* [256. a.]

In letters *ad colligend'* the ordinary directed one to ſell periſhable goods; yet the party ſelling is thereby an *executor de ſon tort*; for the ordinary himſelf cannot ſell.

In letters *ad colligend'* the name of the perſon granting them ſhould be inſerted [Vin. Ab. Executor, C. a 1. Skin. 365.] Dy. 116. pl. 11. 1 Rol. Ab 918, 5 H. 5. 10. Dy. 166. 21 H. 7. Cro. 81. accord'. 5. Co. 34. 1. Kebl. 854. 21. H. 6. 27. b. 16. E. 4. 2. a. 8. Co. 175. 10. H. 7. 15. b 5 H. 7. 11. 10. H. 7. 28. b. Dy. 266 294. 8. Co. 135. b 5. Co. 34. Plow. 257. Dy. 305 61. [Godolph. Orph. Leg. 230.] Keilw. 127. Went. 250. R. 38. 2. Inſt. 398. [Swinb. Wills, 308, 309. Went Exor. 123. and for what act will make a man executor *de ſon tort* generally ſee 1. Com. Dig. 264, 265. 2. Bac. Ab 387—391. Godolph pt. 2. ch. 8. 2. Term. Rep. 97. 597. 3. Term Rep. 587.]

(8) The ordinary is liable for goods which he hath in his hands by ſequeſtration. Dy. 7. Eliz. 232. a. But he has no authority to ſell any goods. 9. Co. 39. a. *Henſloe's* caſe.

Michael, Widow, *againſt* Nethercoote and others.

SOMERSET.

In dower, the tenant vouched the heir in ward to the queen, of whom he prayed aid, after a *procedendo*, judgment was, that the demandantrecoveragainſt the tenant, and he over againſt the heir, but with ſtay of execution of this recovery over till the full age of the heir, and till the queen's hands be amoved.

There can be no diſcontinuance between aid prayer, and the *procedendo*, for the parties are without day.

[Rep. 118. 8. C.]
4. Leon. 201. S. C.

[F. N. B 359. note (e).]
Hett. 71, 72. 9. Co. 17. b. Voucher, 180. 22. E. 4. 21. 2. Inſt. 269. 270. 1. E. 3. 16. Staaf. Prerog. 17. b. 26. E. 3. 30. and 52. 28. E. 3. 4. 34. H. 6. 1. 2 H. 4 8. and 27. 48. E. 3. 5. b 3. El. 202. b. 3. H. 6. 17. b. 46. E. 3. 25. Br. Dower, 21. 26. E. 3. 58. Judgment, 246. 2. H. 4. 7. 8. Br. Dower, 28. 1 E. 3. 12. 27. E. 3. 87. 17 E. 3. 47. Voucher, 91. Br. Dower, 20.

(7) DOWER *unde nihil habet* was brought by *Elizabeth Michael* againſt *Nethercoote* and others, who vouched to warranty as tenants for term of life, *Triſtram Michael* the ſon and heir of the huſband of the demandant being within age, and in ward of the Queen by reaſon of the ward of *J. Strangeway*, alſo within age, and in ward of the Queen by reaſon of a tenure *in capite* of the manor of *Abbotesbury* in the county of *Dorſet*, of which manor the manor of *Chelton* in the ſaid county of *Somerſet* was holden by knight-ſervice; and ſhewed the deed of the demandant's huſband of the demiſe for life with warranty for him and his heirs; and prayed aid of the Queen: and they had it in *Hilary Term* laſt paſt. And now came a *procedendo* in the plea aforeſaid, and in the rendering of the judgment in the ſaid plea with what diſpatch &c. And now it is doubtful to the Court what ſhall be done. And at length, by good adviſement, judgment was given that the demandant ſhall recover againſt the tenants, and they over in value againſt the heir; but with a ſtay of execution to the value until the hands of the Queen are amoved &c. *Simile*, *H.* 5. [*E.* 3. 4. a. pl. 15.] and 46. *E.* 3. [19. b. pl. 23.] and 2. *H.* 4. [23. b. pl. 10.] but 27. *E.* 3. [11. pl. 40.] *è contra*. (8) But the entry of the judgment *ad valentiam* above, was, that the tenants ſhould wait (if the aforeſaid *Triſtram* the tenements aforeſaid whereof &c. to them ought to warrant) for the recompenſe of the third part aforeſaid againſt the ſaid *Triſtram* by reaſon of the ſaid warranty to be had during his minority, and until the hands of the lady the Queen from the poſſeſſion of the land of the ſaid *T.* ſhall be amoved &c. * And note that the *procedendo* was, that the Queen's attorney's fees nothing in the Chancery wherefore the aforeſaid *T.* ſhould be bound to warranty &c. *Vide bene.* And a writ of error was brought, and error aſſigned only in a diſcontinuance between the removal of the record for the aid, and the *procedendo*: and it was not allowed, becauſe the parties are without day *in banc.* for the time &c.

* [256. b.]

The preſent form of entering the proclamations of a fine did not commence till 6. Hen. 7.

(9) *MEM.* That on the firſt entering of proclamations on fines in the form which is now uſed, *s. the firſt proclamation was made on ſuch a day and Term &c.* did not

not commence before 6. *H.* 7. notwithſtanding the ſtatute of 4. *H.* 7. [c. 24.] as appears by a ſearch of the fines in the Treaſury: *ex relatione Bartholmæ.*

Martyn's Caſe.

(10) *MEM.* That an action of treſpaſs *de uxore raptâ et abductâ cum bonis viri* was brought in *London* in the Common Bench of *Weſtminſter*; and the treſpaſs was ſuppoſed to be in the pariſh of *Saint Mary le Bow* in the ward of *Cheap*. And the words of the writ were, *et ea injuſtè detinet et contra pacem et contra formam ſtatuti in hujuſmodi caſu proviſi.* Note this. And the defendant pleaded not guilty. And upon the evidence at *niſi prius* in the *Guildhall*, *London*, this Term, it appeared that the defendant had committed adultery with the wife in *Southwark* (where both the parties inhabit); and that the wife afterwards of her own accord departed from her huſband at *Ratlyffe* in *Middleſex*, and there remained a day and a night, and thither came to her *Martyn* the defendant, and conveyed the wife from *Ratlyffe* to *Richmond* in *Surrey*, to the houſe of a ſiſter of the ſaid wife. And whether this evidence will prove him guilty in *London* or not, I was in ſome doubt, and therefore I moved the Jury to give a ſpecial verdict according to the evidence, and refer it to the judgment of the law; but they did not ſo, but found him guilty generally, and aſſeſſed damages at three hundred pounds, and coſts, three pounds ſix ſhillings and eight-pence. *Quære* the law. And many Judges are of opinion that the ſaid action does not lie in *London*. But the judgment was ſtayed, becauſe the writs being examined, the original was returnable in *B. R. s.* before us whereſoever &c. And this by the negligence of *Kyme* the attorney.

Whether treſpaſs *de uxore raptâ et abductâ cum bonis viri* may be brought in any other county than where the abduction and detention was.

[12. Vin. Ab. 138.]
20, 21. H. 7. 2. 13.
1. E. 4. 1. a. 2. Cro. 502. 538. F Nat.Br. 84. 2. Inſt. 181. 434.
Dy. 202. Weſt. 2. c 34.
Fitz. Treſpaſs, 241. 244.
7. H. 7. 6.
Dy. 207. pl. 25.
Br. Juror, 36.
6. Co. 46.

(11) THE leſſee for term of life ſurrenders one moiety to leſſor; and afterwards the leſſor by indenture demiſes the entire land to a ſtranger by theſe words, *s.* "*habendum* the one moiety that he had by the ſaid ſurrender, "to the ſaid ſtranger for the term of his * life, and *habendum* "the other moiety which the firſt leſſee held, to the ſaid "ſtranger

[* 257. a.]
B. tenant for life, having ſurrendered one moiety, the leſſor demiſed the entire land, "*habendum* one moiety "for life, the other for "years after the death "of *B.* paying four "pounds a-year rent

" for the whole," this reſervation is entire, and he may avow for the whole rent, though *B.* ſtill hold his moiety.

Four kinds of Avowries, Co. Litt. f. 269. 2. Kebl. 444. 6 Car. Cro. 207. 5. Co. 7 b. 30. 107. a. ſee there. 20. H. 16 23. a. 35. H. 8. 56. a. 5. Co. 79. b. Keilw. 134 a. 2. H. 4. 24. Dy. 206. 20. H. 6. 9. Avowry, 12. 12. E. 4. 2. 26. H. 6. Avowry, 17. 9. Co. 135. 40. E. 3. 34. 4. E. 3. 25. 47. E. 3. 27 a. 38. H. 6 23. b. Statt. 21. H. 8. c. 10. 38. E. 3. 23. Avowry, 29. Dy. 85.

[Gilb. on Rents, 34. &c. 4. Bac. Ab. 342.]

" ſtranger from the day of the death of the firſt leſſee for the " term of forty years if he ſhould ſo long live, paying and " rendering for all and ſingular the premiſes four pounds at " the four uſual times of the year." And the leſſee is behind in his rent for a year; and the leſſor diſtrains, and avows for the entire rent, living the firſt leſſee. And by the opinion of the Court he well may, although the ſecond leſſee occupied only a moiety, for the reſervation is entire &c. But becauſe the form of the avowry was bad in the concluſion thereof, *s.* as in lands charged and bound to the diſtreſs of him the avowant, which is always intended of a rent charge, and for this rent above, which is of common right, he ought to have avowed upon the tenant by the manner: and alſo it was alledged that he was ſeiſed of the entire land in his demeſne as of fee, and being ſo ſeiſed thereof demiſed that land, *s.* the one moiety which he had by the ſurrender, and the other moiety which he had in reverſion, dependant upon an eſtate of freehold as above, which is repugnant, becauſe not in his demeſne &c. the avowry was holden inſufficient.

Trin. 8. El. C. B. Rot. 1124.

Judgment of damages by confeſſion in a writ *de plegiis acquietand'*, though it did not appear that the plaintiff had paid the creditor, only that he was impriſoned for the debt (*a*).

Liv. de Entr. 434. S. C. F.N.B. 137. Dy. 370. a. Ow. 19. 560. 24, 25. Pleader br. 3. 43. 48. E. 3. 11. 28 Magn. Chart. c. 8. 48. E. 3. 29. by Kirton.

Peter Coxe *againſt* Will. Thornes.

(12) IN *plegiis acquietand'* the plaintiff declared that he was bound with the defendant as his ſurety, and at his requeſt, to a ſtranger by bill obligatory, and that on the day appointed the creditor was not paid by the defendant; wherefore afterwards the creditor brought a plaint of debt in an inferior court againſt the plaintiff upon the ſaid bill; whereupon he was arreſted and impriſoned &c. And the defendant confeſſed the action, and judgment was given that he ſhould acquit the plaintiff againſt the creditor of the ſum and damages aſſeſſed by the Court. *Quære* what damages, for *non conſtat* that the plaintiff has paid the money to the creditor.

(*a*) But by the record in Co. Ent. 434. b. it appears that the impriſonment was in execution, though the count does not ſtate a regular judgment, for the words are, " idem " Petrus pro prædictis centum et decem ſo- " lidis ad ſectam prædicti Willi' Alefore (the " creditor) apud Burton ſuper Trent prædict' " captus et arreſtatus fuit, *ac in priſona ibidem* " *detent' quouſque idem Petrus prædictos centum et* " *decem ſolidos præfato Willo' Alefore ſolviſſet.*" Then ſee Cro. Eliz. 264. 369. and 2. Term Rep. 640.

Swan

Swan *againſt* Stranſham and Searles.

(13) TENANT for term of life, remainder over in fee, by indenture demiſed, granted, and to farm let, for the term of fifteen years fully to be compleated, rendering thereout annually during the aforeſaid term twenty ſhillings to the leſſor, his heirs, and aſſigns, without any warranty in the deed, or any expreſs covenant that the leſſee ſhould enjoy the term. And within the term the leſſor died, and he in the remainder entered upon the leſſee, and he brought an action of covenant upon the indenture againſt the executors of the leſſor, and ſhewed the caſe as above, in the declaration, ſuppoſing the covenant broken by the executors, againſt the form and effect of the indenture aforeſaid; and upon this the defendants demurred in law. And in *Hilary Term*, 9th of the preſent Queen, the caſe was argued at the bar and bench. And by the opinion of all the Juſtices the plaintiff ſhall be barred. And defects were found in the declaration * becauſe the plaintiff had not alleged in fact that he was poſſeſſed, and afterwards expelled &c. but by implication. Alſo the particular eſtate with the remainder over ought to have been certainly alleged, and not † *by implication* &c. Alſo the form of the writ ſhould have been *quod teneat conventionem &c. de dampnis et de perditis occaſione &c.* For the matter in law, three of the Juſtices, *ſ.* WELSHE, BROWNE, and DYER thought, that the executors ſhould not be charged by this covenant in law, becauſe the covenant in law ends and determines with the eſtate and intereſt of the leſſee; and if it had been a covenant in fact or expreſſed, or warranty of the term expreſſed, it would be otherwiſe; and no cauſe of action is given againſt the teſtator in his lifetime: and for the argument of this caſe ſee the Treatiſes *de Naturâ Brevium*, and the *Regiſter*, and *M.* 4. [*E.* 3. 57. pl. 71.] and *M.*

Tenant for life makes a leaſe for years (by demiſe and grant) rendering rent, by indenture, and dies within the term, & the remainderman enters on the termor; holden that an action will not lie againſt the executors but upon an expreſs covenant, for the covenant in law expired with the term. 2dly, That plaintiff in ſuch action muſt expreſsly ſhew himſelf in at the time of the ouſting, and not by implication only.

[6. Vin. Abr. 383.]

Mo. 74. } S.C.
1 Andr. 12. } S.C.
[Benl. 150. }

* [257. b.]

1. Leon. 179. 2. Leon. 104. M. 7. and 8 Eliz. Filmer Rot 1537. 5. Co. 17 a. Dy. 14. 69. Ow. 105 32. H. 6. 32. b. R. 259.

[Cro. El 441. 1 Saund. 116. 1 Lev. 194. 2. Bulſ. 263]

Reverſion with rent reſerved is cauſe of warranty, as it ſeems by 6. H. 7. 2. a. 10 H. 7. 10. b. by Frow. 12. H. 7 2. b. by Conſtable 22. H. 6. 44. But now by the death of the leſſee for life the rent and reverſion are gone, 20. H. 7. 10. b. 32. H. 6. 32. b. 3. E. 3. 4. 48. E 3. 2. b. 9. H. 6. 43. b. Dy. 57. 2. 324. pl. 34. 2. Brn. 160, 161. R.

(13) *Trin* 22. *Eliz. Rot.* 859. ſuch a judgment was given between ✠ *Browning* and *Windſore* in *Suffolk*, and the opinion then was, that this action lies againſt the executors of the leſſor who was tenant in tail. Vide Bendl 150. pl. 208.

E. 41. *Eliz. Rot.* 394. *B. R. Nole v James* [4. Co. 80. Cro. Eliz. 674 S. C. but not exactly S P.] ruled accordingly, where tenant *pur auter vie* made a leaſe for years, and *ceſtuy que vie* died during the term.

See the caſe of *Luton and Waller*, ✠ M. 1653 fol. 82. a. where ROLLE, *Chief Juſtice*, doubted whether the law be ſo as is here adjudged in the caſe in *Dyer*.

36 *Eliz* by *Fenner*; but 33 *Eliz* ruled good, for he cannot be expelled without poſſeſſion, † 304. 38 *H.* 6. 1. 19 *E.* 3. Briefe, 370.

† Criz. *per un ce quod.*

260. Dy. 358. 2. Keile, 569. 1 Saund. 117. 3. Cro 157. Mo. 74. 400. Went. 180. Sty. 406. 2. Brit. 160. By. 14. pl. 69. 114. pl. 60. 29. E. 3. 48. 32. H. 6. 22. 7. E. 3. 3, 4. Fitz. N 104. 4. E. 3. 53. Br. Covenant, 5. 4. E. 3. 3. 1. H. 5. 1, 30. E. 3. 38. Countr. de Garr' 6. Dy. 328. Recover in value, 1. 5. Co. 8. 18. 6. Co. 15. 34. E. 3. Gard. 129. 38. E. 3. 24. 18. H. 3. Covenant. 30. 71. F. Nat. 146. C. 3. Cro. 214.
35. H. 8. 57. a. Fit. 145. l. 146. C. 42. E. 3. 3. b.

7. *E.* 3. [65. a. pl. 67.] where the heir ſhall be charged in covenant, and the ſtatute of bigamy [4. *E.* 1. ſt. 3. c. 6.] *ſe. dedi et conceſſi*, and *M.* 11. *H.* 6. [*Eaſt.* fol. 41. b.] 6. *H.* 7. [2. a. pl. 3.] and 2 *H.* 4. [6. b. pl. 25.] and 42. *E.* 3. [3. pl. 14.] and 20. [30.] *E.* 3. [6. b. 14. a. b.] in ward, by the *Queen Philippa v. Simkyn Simeon*, and 47. and 48. *E.* 3. [22. a pl. 50.] and 22. [1. b. pl. 4.] and 32. *H.* 6. [52. b. pl. 26. 32. b. pl. 27.] and 26. H. 8. [3. b. pl. 11.] And afterwards, in *Hilary Term*, it was again argued at the Bench. And for the matter in law WESTON was of opinion againſt the three other Juſtices, becauſe the leaſe was by indenture, which is matter of concluſion and eſtoppel; but if it were by deed poll, he agreed with his companions. And *quære* what difference &c. But BROWNE put this caſe. A man ſeiſed in fee-ſimple made ſuch a leaſe by indenture for years as above without expreſs covenant, and died, and his heir in and by deſcent ouſted the termor, he ſhall have an action of covenant againſt the heir for the privity &c. And ſo the aſſignee of the termor ſhall have againſt the leſſor if he be ouſted by him without expreſs words of warranty or aſſignment, *quære* thereof, and ſee the ſtatute 32. *H.* 8. c. 34. And afterwards, in *Eaſter Term* following, judgment was given againſt the plaintiff in the principal caſe before. The ſame caſe in effect was ſo ruled in *Trinity*, 22d of the preſent Queen, between *Broderidge* and *Windſore*; and a demurrer to the declaration, becauſe no expreſs covenant or warranty of the term was comprized in the indenture, but a naked covenant in law.

[2 Com. Dig. 361. Dougl. 187. note 59. See ib. 461. note, and 455. 3. Term Rep. 393. 678. 1. Hen. Bl. 562. 4. Term Rep. 75.]
[Bul. Ni. Pr. 158—161]
Covenant Br. 32.
Plow. 457. Br. Deputy, 10. 4 Co. 8. 5 Co. 71.
[1. Wood. 395. 411, 414. Sheph. Touch. 174, 175. 2. Vern. 322. 2. Com. Dig. 563 Dougl. 43. 1. Hen. Bl. 34.]
[See Cowp. 374—376.]

Smith *againſt* Rigby.

In treſpaſs, defendant ſaid he was foreſter for life by patent of a walk in the king's foreſt, and that the *locus in quo* was parcel, and prayed aid. Whether the plaintiff may counterplead *nient compris*, *quære*. But by conſent aid was granted.
[7. H. 6. 36.]

(15) TRESPASS for a cloſe broken and graſs deſtroyed at *Epping* by *Smith* againſt *Rigby*. The defendant ſhewed that the thirty acres of land called *Homefield* in the new aſſignment, were from time whereto memory runneth not, within the metes and bounds of the foreſt of *Waltham* in the county aforeſaid, of which the Queen and her progenitors &c. were ſeiſed in fee in right of the crown, and that the defendant was a foreſter of a walk there called *Epping Walk*, by patent made to him by *E.* 6. for the term of his life, and that the * ſaid thirty acres were within and

* [258. a.]

parcel

parcel of this ſaid walk, and demanded judgment *ſi reginâ inconſultâ &c.* And the plaintiff took a counterplea that the ſaid place called *Hamacloſe* was out of the limits and bounds of the foreſt, and not within them, and not parcel of the ſaid walk, &c. *Quære* well, Whether he ſhall have the counterplea here, of which the Court would adviſe. See thereof † 27. *H.* 8. fo. 34. and *E.* 4. *H.* 6. 2. [18. pl. 4.] and *H.* 33. *H.* 6. fol. 3. [a. pl. 10.] and entered by the report of the book, *Rot.* 313. but it is not found in this Term and roll, as it was ſearched, and *T.* 37. *H.* 6. 8. [28. pl. 7.] and 1. *H.* 7. in aſſize, *Croſt's*, *obiter*, fol. 23. [28. pl. 6.] and *E.* 22. *E.* 4. 28. [20. pl. 48.] and *M.* 2. *E.* 4. [26. a. pl. 29.] all theſe books tend to this, that the counterplea is good to aid in this action, but not in a real action. But *M.* 28. *H.* 6. fol. 4. and *M.* 27. *H.* 8. fo. 34 [28. a. pl. 15.] tend to the contrary, and to theſe authorities WELSHE and WESTON, *Juſtices*, accorded, and againſt the counterplea; and BROWNE and DYER to the contrary, and they held with the counterplea, and againſt the aid of the Queen; and the demurrer was continued until the next *Eaſter Term*, when the Counſel for the plaintiff, which was *Benlowes*, conſented *gratis* to the aid without arguing the demurrer, wherefore the aid was granted, *et ſic ſequebantur penes Reginam.* And 11. *H.* 7. 48. [7. b. pl. 29.] in treſpaſs the defendant pleaded a grant by patent of the King to the preſent Queen of the land of which &c. and that the Queen leaſed it to him at will, and prayed aid of the King, and could not [have it], becauſe he was a ſtranger to the patent, and nothing is loſt by the King in this action.

Mo. 842.

4. H. 6. 10.
37. H. 6. 32.
2. H. 7. 14.
1. E. 4. 10.
Br. Counterple d'ayd. 13. 18. 32.

[2. Vin. Abr. 195. 3. Keb. 744.]

17. H. 8. Cro. 174.
37. H. 6. 28.

24. E. 3. 12, 13. in Count. d'yad. 14.

7. H. 7. 7.

Hilary

Hilary Term,

9. Queen Elizabeth.

Pollard *againſt* Paine.

In *ejectione firmæ* for tithes, and a barn and garden of a rectory, judgment that plaintiff ſhall recover *the rectory barn and garden*, and a writ of ſeiſin accordingly, and inquiry of damages returned of more than the plaintiff demanded, and judgment upon that alſo, how far this is erroneous or amendable, *quære*.

16. H. 7. 7. a. 15 H 7. 8. a. 5. Co. 36. Dyer, 116. 304. 9. Car. Cro. 301. [Hardr. 57.] 11. H. 6. 6. 7 E. 4. 6.

(16) IN *ejectione firmæ* in *B. R.* by bill, the count was, that one *W. Turner*, Dean of the cathedral church of *Wells* in the county of *Somerſet*, was ſeiſed of the rectory of the pariſh-church of *Chard* with its appurtenances in the county of *Somerſet*, in his demeſne as of fee; and being ſo ſeiſed, by indenture demiſed the tithes of the corn of the ſaid rectory, together with a certain barn and garden to the ſaid rectory belonging, to the ſaid plaintiff for the term of ſixty years, by virtue of which he became poſſeſſed thereof. The defendant pleaded a bar, to which the plaintiff demurred in law, which was holden inſufficient by the Court; and upon which the judgment was entered in this form, *ſ.* "Therefore it is conſidered that the aforeſaid plaintiff ſhould recover againſt the aforeſaid defendant, his term aforeſaid yet to come *of and in the rectory, barn, and* * *garden aforeſaid, with the appurtenances*, and that he ought to recover his damages againſt the aforeſaid defendant by reaſon of the premiſes &c. wherefore it is commanded the ſheriff that without delay he cauſe the aforeſaid plaintiff to have full poſſeſſion of the *rectory, barn, and garden aforeſaid with the appurtenances*, and that he enquire of the damages &c. and for that the Court are not yet adviſed what damages he hath ſuſtained by reaſon of the premiſes &c." And upon this damages were found, aſſeſſed, and returned more than the plaintiff counted for; and judgment was thereupon given in laſt *Trinity Term*. And Whether this judgment be erroneous, and amendable by the Court now in this Term, or Whether it be well enough, as it is for the tithes, barn, and garden? And the words *of and in the rectory* aforeſaid are void and ſuperfluous words, becauſe the entire rectory was not leaſed, and no term ſuppoſed therein by the

* [258. b.]

Dy. 65. b. 34. E. 3. Damages, 7. 29. E. 3. 42. Damages, 133. 17. E. 2. Damages, 13. 8. H. 6. 4 Damages, 21. Dy. 55. b. 194.

21. H. 7 34. 42. E. 3. 7.

(16) *E. 1. Car B. R.* [Lat. 61] *Hemes'* and *Stromer's* caſe. *Ejectione firmæ* of a manor, the jury found the defendant guilty for a meſſuage and curtelage parcel of the aforeſaid manor &c. fol. 10.

count,

count, but in the ſaid three particulars. Alſo no expreſs judgment is given for the tithes, &c. And alſo damages are aſſeſſed for expulſion from the entire parſonage, of which there was no complaint. Alſo the writ of ſeiſin or poſſeſſion awarded *ex officio Curiæ* without prayer of the party &c. And the writ was, that the plaintiff had recovered poſſeſſion of the aforeſaid term, which is falſe. And alſo in the return of the inquiſition more damages are found by one hundred pounds than the plaintiff counted of &c.—was much debated &c.

3. Cro. 544. 10. Co. 117. 7. E. 4. 31. 12, H. 7. 12. 28. 18. 20. H. 6. 7. 5. 17. 15 13. H. 7. 16. b 1. Bulſtr. 49. Hoblin's caſe.

[SayerDamages, ch. 34. 2. Bl. Rep. 1300. Hen. Black. 643]

The Earl of Suſſex's Caſe.

(17) IN a writ *fur diſſeiſin* againſt *Sir Humphrey Ratclife*, knight, he made default after default: whereupon came *T.* Earl of *Suſſex*, as he in the remainder or reverſion after the death of *Sir Humphrey* tenant for life, who prayed to be received, and he was received, and pleaded in bar, upon which the demandant and he were at iſſue. And at the laſt aſſizes at *Bedford* before CATLIN *Chief Juſtice* and BROWNE *Juſtice*, the iſſue was found for the Earl againſt the demandant; and in the intervening vacation between the aſſizes and the day *in banc*, *Sir H. Ratclife* the tenant for life died in the county of *Bedford*, whereby &c. And at the day *in banc*, the appearances of the demandant and tenant by receipt by their attornies were recorded; and the demandant pleaded this death and prayed that the writ might abate, and that judgment ſhould not be given &c. And the Earl prayed that the *poſtea* and verdict be brought up and received by the Court, and that judgment thereon might be given for him, and would not anſwer to the death. And the Court were in doubt laſt Term and this Term what they ſhould do, and the Court would further adviſe till next Term (*a*).

He in reverſion being received on default of the tenant for life obtains a verdict at the aſſizes, after which, and before judgment, the tenant for life dies; whether the writ abates, *quære*.

1. Leon. 188. 20 E. 3. Judgment, 180. Dy. 1. 19. E. 4. 4. 40. E. 3. 38. a.

35. H. 6. 58. B. Jours, 11. Judgment, 16. 4. H. 6. 9. b. B. Jours, 35. 18 E. 4. 35. Br. Judgment, 85. Dy. 175.

(17) It ſeems that by his death the writ ſhould abate, becauſe no judgment can be given againſt a dead perſon, 21 *H.* 6. 10. 9. *H* 7. 23. 20. H. 7. 10. A *præcipe quod reddat* was brought againſt a huſband and wife; the huſband made default and the wife was received and traverſed the action, and found againſt her at the miſe, and afterwards the wife ſaid that her huſband was dead ſince the verdict, and yet the plaintiff had judgment to recover, *M.* 27. *E.* 3. 88. [52 pl. 55.) Fitz. Judgment, 193. See 9. *H.* 4. 1. one dead after verdict, and yet judgment was given for the plaintiff although he was dead. But ſee in Waſte, and the writ was abated, *M.* 34. *E.* 1. Fitz. Br. 854. See Fitz. Br 209. and Quare Impedit 71. and Monſtrans [Monſtraverunt.] 7.

(*a*) But all difficulty is now removed, for by 17. *Car.* 2. c. 8. §. 1. made perpetual by 1. *Jac.* 2. c. 17. § 5. it is enacted, that in all actions perſonal, real, or mixt, the death of either party between verdict and judgment ſhall not be alleged for error, ſo as ſuch judgment be entered within two Terms after ſuch verdict. See 1. Salk. 8. pl. 21.

* Eaſter Term,

9. Queen Elizabeth.

Sir John Savage's Caſe.

The office of ſteward of a manor is not grantable as a reverſion; except by the King; and that grant being void, the grant of a fee for exerciſing it is void of courſe.

Hob 150 1.Cro.279. 7.E.6.80.b 39.H.6 48. b. 5. Co 124. b. Lit. 548. 22.E 4-37. a. 15. E 4. 8. b. F.Nat. 231. 6. E. 4. 8.

(18) SIR *John Savage*, knight, granted the office of the ſtewardſhip of a manor for term of life, with a fee of forty ſhillings for the exerciſing of the ſaid office, and the grantee was ſeiſed of the office accordingly: and afterwards the grantor by a deed reciting *quod cum* the firſt grantee had and held the office of ſteward &c. for the term of his life, granted the reverſion of the ſaid office by the name of the reverſion &c. after the death of the aforeſaid firſt grantee, together with the fee of forty ſhillings for exerciſing of the ſaid office, with a clauſe of diſtreſs. And after the death of the firſt grantee, the ſecond grantee held the courts for eight years, and for arrears he diſtrained and avowed. And by the opinion, the grant is void by the name of reverſion, becauſe there was no reverſion of it in any perſon, and alſo there could be no ſteward except one, *i.* he who exerciſed the office, any more than of one corody: and if the grant was of the office itſelf, and not of the reverſion of the office in the caſe of a common perſon, and the *habendum* that office after the death of ſuch a one &c. it is not good, but in the caſe of the King it is otherwiſe: *quære.*—and if the grant of the office be void, the grant of the fee for exerciſing it is void alſo, becauſe it is a conſideration executory and future. Wherefore &c. And alſo it was not alleged as matter of fact, that the office was firſt granted by matter in deed for term of life, ſo that the grantor might make a grant of the reverſion, but only reciting *quod cum* as above. And for theſe cauſes the plaintiff demurred to the avowry, and the opinion of the Court was, that the avowry was bad.

Pr. Corody, 7 Grants, 127. Patents, 52 8.E.4. 17. 11.E.4 30. Aſſ 4. 37 11.6. 48. 11.Co.4. Hob. 170. [But ſee poſt. 270. b] pl. 23]

[See Vin Ab. Offices, (F.) 3 Bac. Ab. 735. and ante, 80 pl. 58. with note (*a*) there.]

3.H 7.16.a. 8. Co. 5. 7.a.4.El.216.1 5.E.4. 8. b. 6.H.7.14 a. 8.H. 7.12.b. Plow. 381. 11. E. 4. 8. Br. Eſtates 44. Plow. 169. Dy. 243. 337. 35.H.6.48. Plaw. 123.

By the union of two churches in *A.* they are ſo made one, that the patron may bring *quare impedit* by the name of the church in *A.* with-

(19) *MEM.* That in the time of *Ed. 3.* in *Illiſield* in the county of *Southampton*, there were two parochial churches, the one called the church of *Saint Martin*, and the other the church of *All Saints*; and the advowſon of the

firſt

firſt church was appendant to the manor of *Illiſfield* in *I.* aforeſaid, and the advowſon of the other church, *ſ.* of *All Saints*, was an advowſon in groſs: and there were ſeveral patrons of them: and both the churches being void, the church of *All Saints* was united, annexed, and conſolidated to the other church by the aſſent of the ordinary and of the patrons: and upon the ſaid union it was ordained by the ordinary with the aſſent of the patrons, that the patrons, their heirs, and aſſigns, * ſhould preſent to the ſaid church of *Saint Martin's* alternately for ever, and that the patron of the church of *All Saints* ſhould have the firſt turn, which then was void, which was executed accordingly. And afterwards divers preſentations were had by turns by them and their heirs until the time of *Hen.* 8. in which time the patron of the advowſon in groſs made a grant of his patronage and advowſon in fee to the uſe of himſelf for the term of his life, and after his deceaſe to his wife for her life, and after her deceaſe to the uſe of the right heirs of the grantor in fee; and afterwards he died, and his wife ſurvived and took huſband; and after the ſtatute of 27. *H.* 8. [c. 10.] the other patron preſented twice, *ſ.* two turns together, ſo that he uſurped upon the wife, being only tenant for life, and alſo covert baron. And afterwards the huſband and wife died; and at the next avoidance the right heir of the patron in groſs preſented as in his turn, and was diſturbed, and brought a *quare impedit* againſt the heir of the uſurper &c. And the writ was, that he ſhould permit him to preſent &c. to the church of *Illiſfield*, without ſaying *of Saint Martin of Illiſfield &c.* and upon the declaration the defendants demurred in law this Term. (20) And firſt it was moved, Whether the entire advowſon &c. became in groſs for one turn, and remained appendant for the other for ever. See 43. *E.* 3. *fol.* 35. in *quare impedit*, where a man was ſeiſed of a manor to which &c. and a ſtranger brought againſt him an aſſize of *darrein preſentment* of the ſaid advowſon, or writ of covenant, and the plaintiff levied a fine *ſur cognizance de droit tantum* to the defendant, and thereby granted that the conuſor ſhall have the next preſentation, and he the ſecond, and the conuſor the third, and he the fourth, and ſo they and their heirs to preſent by turns for ever: the advowſon remained appendant as before every other turn, becauſe it was never diſappendant by this fine, only every other turn which did not belong to the grantor &c. And ſo it ſeems in the

out diſtinction of the one or the other.

If an advowſon appendant and another in groſs be united, it will be appendant for one turn and in groſs for the other.

[3. Mod. Ent. 19. 22. Wats. Cler L. 60. 63. Gibs. Cod 920. and ſee Com. Dig. Tit. Advowſon (B.) & (E)]

* [259. b.]

Co Lit. 122. 186. 6. H. 7. 13. b. 14. Plow. 497. b. Dy. 239. 244. 2. Ro. Ab. 778. D. Stu. 115.

Fit. Nat. 34. Plow. 58. 10. Co. 136. Dy. 172. b. 181. a. 35. H. 6. 24. b.

2 H. 4. 7. Co. Lit. 122. a. 2. H. 7. 4. 1. Ro. Ab. 138. (c.) 1. 5. Co. 38. Qua. Imp. 128. 2. Ro. Ab. 2. 3. 33. H. 6. 4. a.

13. E. 3. Qua. Imp. 58. Co. Lit. 186. b.

25 E. 3. Darrein Presentment, 11. 62 11. H. 4. 54. B. present. al Eglis, 62. 6 22. E. 3. 39. 9. 13 H. 8. 14. 22 E. 4. 9. a. 3. Co. 3. 20 E. 4. 14.

32. H. 8. B. N. C. 182. 10. Co. 136. a. 19 35. H. 6. 40. b. 39. N. B. 31. 9. 13. E. 3. 15. a. Qua. Imp. 29.

other case by the opinion of some, and no moieties of the advowson as there are between co-parceners, joint-tenants, or tenants in common of an advowson, between whom there is an agreement to present by turns; for in that case there were once moieties, but not in the other case. Also it was moved, that by this usurpation (*a*) the other was out of possession, and they are not like co-parceners who are privies in blood, Wherefore &c. And *quære* Whether the right heir in the case above should be adjudged as a purchaser, or by descent; for if as a purchaser, it seems he is without remedy; therefore *quære*. And for the third point it seemed to all the Justices except BROWNE, that the writ above without saying "*of* "*Saint Martin of Illisfield*," is well enough, because now there are not several churches there &c.

(*a*) But now by 7. *Ann.* c. 18. no usurpation &c. shall displace the estate or interest of any person &c. or turn it to a right. And if coparceners, jointenants, or tenants in common be seised of any estate of inheritance in any advowson of any church &c. and a partition is or shall be made between them to present by turns, each shall be seised of a separate estate to present accordingly.

* [260. a.]

For the Church of Kingsley.

In *quare impedit* against the bishop and incumbent, the bishop claiming only as ordinary, issue between the others and judgment for plaintiff. On the writ to the bishop, he is not estopped from returning that pending the issue, and the church being void, another had presented a clerk of whom the church is now full; and if this return be false, plaintiff may have a *quare non admisit* against him, and a *scire facias* against the incumbent to try the title.

6. Co. 62. 20. E. 4. 14. 35. H. 6. 33. 10. H. 7. 27. 21. E. 4. 1. 10. Co. 54. b. 2. Ro Ab. 390. Dy. 135. a. 194. b. 10. Co. 118, 119. Co. Magn. Chart. 70. 424. 6. Co. 52. Dy. 3. 50. pl. 19. [2. Inst. 424, 425.]

* Basset *against* Stafford and others.

(21) A QUARE *impedit* was brought by *Basset* against the ordinary, the patron, and *I. S.* clerk. The ordinary claimed nothing but as ordinary &c. the patron made title to the advowson, and that he presented the said *I. S.* who on his presentation was admitted &c. and traversed the appendancy of the advowson alleged by the plaintiff. And *I. S.* as incumbent pleaded the same plea; on which they were at issue; and found for the plaintiff, and further *ex officio Curiæ*, that the church was full of the said *I. S.* &c. and the other usual points; upon which the Justices at *nisi prius* gave judgment for the plaintiff according to the statute of *West.* 2. [c. 5.] and moreover awarded a writ to the Bishop commanding him, that although the church was full of the said *I. S.* he should remove him, notwithstanding the reclaim &c. but this writ was not returnable as it is said. And the record was sent into the Bench; and there the plaintiff had another writ to the Bishop *sicut alias* in the same form, and returnable in the Bench as it should be; upon which writ the Bishop returned, that pending the *quare impedit*, and before judgment, it was found by commission of

melius

melius inquirend' directed to one *Horton* and others, that the ſaid advowſon with other lands of the ſaid plaintiff in the aforeſaid county which were holden of the Queen *in capite* had deſcended to the plaintiff from his father; and that the plaintiff was and ſtill is within age &c. and the lands ſeized into the Queen's hands: whereupon the Queen preſented to him one *Bickeley* clerk, the church being then void, and for three months before the delivery of the firſt writ to him, that he admitted &c. and ſo the church was now full, wherefore he could not execute that writ &c. nor the other writ &c. And Whether the ordinary ſhall be eſtopped from making this return of the Queen's title, and the plenarty of the church by her incumbent, by any thing contrary in the record, or not, was well debated; and by the better opinion of the Court the Biſhop is not eſtopped &c. becauſe he is neither party nor privy to the verdict, nor to any plea which acknowledges the plenarty of the church, Wherefore &c. But if the matter be falſe which he hath returned as his excuſe for not obeying the two writs, the plaintiff may have his *quare non admiſit*, and the plaintiff may alſo have a *ſcire facias* againſt the former and new incumbent to have execution, according to the Year 21. *H.* 7. [fol. 8. pl. 9.] and then the Queen's title may come into diſpute.

3. Leon. 138. Hutton 24. Gold. 3 pl. 4.

15. H. 7. 8. a. 1. H. 4 a. b. 40. E 3. 44 5. H. 7. 37. 14 H. 7. 26 a. 35 H. 6. 35 a 22 E. 3. Ceſſavit 46. 43. E 3 15. b. 32. E. 3. Ceſſavit 24.

Co. Lit. 344. b. Dy. 217. pl 62. 6. Co. 52. a. 2. Cro. 93. } 6. Co. 50. } *contra.* Hob. 320.

40. E. 3. 28. 27. E. 4, 10, 19. 5. H. 7. 27. 3. H. 7. 11. N. B. 36. b. 21. Eliz. 364. a.

[3. Mod. Ent. 180, 181. 5. Com Dig. 322. 1. Sid, 93. Wats. Comp. Incumb. 299, 300, 301.]

Slyfield *againſt* Sibill.

(22) IN debt the count was upon a demiſe made by the plaintiff to the defendant for years of divers parcels of land ſhewing them in certain, rendering certain rent by the year; and for the arrears the action accrued. The defendant pleaded, that he did not demiſe in manner and form &c. and of this he put himſelf upon the country, and the plaintiff *è contra*. And the jury, at *niſi prius* in *Guildhall London*, found that the plaintiff demiſed all the aforeſaid lands [and] tenements, except one parcel by * name, and that as to it he did not demiſe, and aſſeſſed damages &c. And now *in banc* the plaintiff prayed judgment, but could not have it; but the Court adviſed until next Term; but the opinion was againſt the plaintiff, and therefore it was put to arbitration in the next Term. See a ſimilar caſe, *E.* 21. *E.* 4. 3. and *E.* 22. 7.

In debt for rent of certain lands, proof of a demiſe in part only will not ſupport the declaration

[Bendl. 177.] } 1. And. 13. } S. C. Mo. 80.

* [260. b.]

36. H 6. 26. Dy. 299. 194. b. 2 Rol. Ab. 702. Dy. 44. a. 115. a. 21 E. 4. 22. 7. H. 6. 33 b. 29. H. 8. 32. b. 16. H. 7. 3. b 9. Co. 14. 12. E. 4. 22. 6. E. 6 57. 22. E. 4. 2. b. N. C. 190. 460. Dier, 333. 10. E. 4. 2.

[See note (*a*) to fol. 219. pl. 11. ante. Dougl. 668.]

Bowne

Browne *against* Coke.

In Cur' Ward".

Where the wardſhip of the body and land is ſevered, the land cannot be retained for the value of a marriage refuſed by the heir. And the ſtatutes for the erection of the Court of Wards give it power to retain only for livery.

27. H. 8. 5. 10. H. 6. 20. 40. Co. 82. 14. Eliz 306. b. 21. Aſſ. 26. 7. H. 6 12. b. Br. Intruſ. 23. 21. Aſſ. 6. 2. H. 7. 9. 21. E. 4. 43. 40. Et. 3 6. b Dier, 255. b. 9. H. 6. 28. a. 1 H. 7. 17. 2. H. 6. 6. 6. H. 4. 6. Stat. Marlb. c. 7.

2. E. 2. Action ſur ſtat. 24. Merton, c. 6.

10. H. 6. 20. b.

[Wardſhip with all the other conſequences of feudal tenure was abolished by 12. Car. 2. c. 24.]

(23) THE Queen granted the wardſhip of the body and marriage of the heir of her tenant to another, reſerving the land; and he tendered a marriage to the heir, who refuſed, and yet made an offer to the grantee of the value of the marriage, which he diſliked. And afterwards the heir came of full age, and offered to ſue out livery: and the grantee in the Court of Wards prayed that the land might be reſerved to him, and his uſe, as a gage or diſtreſs until ſatisfaction be made &c. And by the opinion of DYER and SAUNDERS, aſſiſtant counſellors to the Court, it ſhall neither to one uſe or the other; for the intereſt of the Queen in the marriage is out of and gone from her, and ſevered from the Court. And ſo would it be, if it were the caſe of a common guardian in chivalry when the wardſhip of the body and marriage is ſevered from the wardſhip of the land: the retaining of the land is not given by the ſtatute of *Marlebridge*, and no power given in the ſtatutes for the erection of the Court of Wards and Liveries in 32. *H.* 8. [c. 46.] and 33. [c. 22.] of retaining the land until the heir will compound with the Queen for his marriage, but only for the livery. But KAYLEWAY and NOWELL thought otherwiſe in the caſe above; and that their practice had been always otherwiſe; *quod non credo*, but the grantee ſhall be driven to his writ *de valore maritagii* or *foriſfacturæ* as the caſe is.

Wotton *againſt* Cooke and another.

The record of *niſi prius* may be amended by the original record.

See the record in the Book of Entries, tit. Partition, fol. 409.

Dier, 265. 2. Car. Cro. 54. Dy. 78. pl. 43. 8. Co. 161, 162. 8. Car. Cro. 178.

(24) A WRIT of partition was brought in the county of *Warwick* by *Wotton* againſt *Anthony Cooke* and *Temple*, who appeared, and *Temple* confeſſed the partition, and judgment was given accordingly, but with a ſtay of execution &c. And *Cooke* made title in ſeveralty to the entire land, and traverſed the ſuppoſal of the writ and count with an *abſque hoc*, and the plaintiff maintained the writ and

(24) *H.* 22. *Jac.* Rot. 188. *B. R. Todman v. Ward*, [Pſalm. 404, 405. Lat. 51.] in *ejectione firmæ* the paper book was right, *i.* an *acre* of land; and the bill upon the file a *cloſe* of land, and the bill was amended by the paper book. Another variance was amended, and this diſtinction taken, where it was a paper book in the office of the clerk, all ſhall be amended by it, otherwiſe if it were another paper book, and the bill upon the file ill.

count,

ecount, and this he prays may be inquired of by the country, *and the aforeſaid Anthony likewiſe*, therefore let twelve &c. And in the record of *niſi prius* this word "*Anthony*" by negligence of the clerk of the treaſury was omitted in the joinder of the iſſue, but the principal record was perfect, and beſides the *jurata* entered on the record of *niſi prius* was made *between Wotton plaintiff and Anthony Cooke and Peter Temple defendants*, when *Temple* had made a confeſſion of the partition before, and ſo a ſtranger to the iſſue. And yet the writ of *niſi prius* was well enough; and the record which warranted it, *ſ.* the entry of the jury by the clerk of the juries, was well, *ſ. between the plaintiff and Anthony Cooke only*; and the record of *niſi prius* as above, *ſ.* between the plaintiff and two * defendants, which was the miſtake of the clerk of the treaſury. (25) And notwithſtanding theſe defects in the record of *niſi prius*, the iſſue was tried, and found for the plaintiff at *niſi prius* before DYER and BENDLOWES in laſt *Lent*. And now in arreſt of judgment theſe matters were moved by *Cooke's* counſel, and it was well argued at bar and bench. And by the opinion of WELSH, WESTON, and DYER, the verdict was well taken, and ſufficient authority given upon the ſaid tranſcript of the record to the Juſtices of *niſi prius* to take the verdict, for the above word *aforeſaid* cannot have any other intendment than to the ſubſtantive which is underſtood, *ſ. Anthony*. And as for the other, as well the very record as the writ of *niſi prius* declares in itſelf that the jury could not be againſt *Temple*, who had not joined any iſſue. And ſuch miſtakes in the record of *niſi prius* have been many times amended, as 2. *H.* 4. [6. a. pl. 23.] and 7. *E.* 4. [15. b. pl. 7.] but 11. *H.* 6. [11. a. pl. 26.] *à contra*, (*a*) *becauſe there the verdict was taken by the Juſtices of niſi prius of a thing which was not in iſſue and warranted by the record of niſi prius, although it was by the original record.* And ſee 2. *R.* 3. [11. a. pl. 24.] for a miſpriſion of the Court not amendable &c. But BROWNE againſt the opinion of the aforeſaid Judges; becauſe the power of the Juſtices of *niſi prius* is reſtrained, and given by ſtatute

Dy. 223. pl. 27. 1. Ro. Ab. 202. (D.) 8. 2. Brown. 47. 3. Bulſtr. 161. Yelv. 109. 3. Cro. 776. 2. Cro. 514. 1. And. 30. N. Ben. 20.

* [261. a.]

Br. Amendment, 71, 46. E. 3. 19. a.

[Barnes, 4. Gilb. C. R. 162, 163. 1. Com. Dig. 337. Cowp. 407. 429. Dougl. 746. 1. Term Rep. 782. 3. Term Rep. 749.]

8. Co. 162. Br. Amendment, 27. F. Amendment, 8. Br. Amendment, 82. 20. H. 6. 15. Mo. 681.

Note, if the record of *niſi prius* be different from the original record, it ſhall be amended, for it is the fault of the clerk.

(*a*) In the later Editions, and in the laſt, this ſentence by omiſſion ſtood thus unintelligible, *ce que ne fuit pris per les Juſtices de Niſi Prius comment que il fuit per loriginal record.* I have reſtored it from the Edit. of 1598.

law

law to other Juſtices than the Juſtices of the Court out of which the record iſſues, therefore they cannot amend the record which was ſent to them from this Court of the Bench.

Turner *againſt* Cuthbert Muſgrave.

If the defendant in appeal of murder be found guilty of manſlaughter, Whether the King can pardon the burning in the hand, *quære*.

Cromp. 86. 9. Co. 68. Plo. 101. a. b. Pult. 206. 6. Co. 67.

(26) IN APPEAL of death the plaintiff counted of a felony, and murder by lying in wait, aſſault, and malice prepenſe and aforethought &c. the defendant pleaded not guilty to the felony and murder &c. and by *niſi prius* was found not guilty of the murder, but guilty of the death, *ſ.* of the felonious ſlaying &c. And now in the Queen's Bench it was doubted upon this verdict, Whether the defendant ſhall be diſcharged of the appeal, although he cannot read as a clerk, or not? And note, the verdict by the *poſtea* was, "that the "defendant is not guilty of the murder within mentioned &c. "in manner and form as the aforeſaid plaintiff hath within "declared againſt him; but the ſaid jurors ſay, that the afore- "ſaid defendant, on the day, year, and place within con- "tained, feloniouſly ſlew the aforeſaid *B. T.* but not of his "malice aforethought, and afterwards he demanded the book." But *quære* well, Whether the Queen can pardon the burning of the hand; for, the impriſonment ſhe cannot, becauſe it is the execution of the party in appeal, and he ſhall be convict without making purgation during his life. And ſee *M.* 13. of the preſent Queen [*poſt.* fol. 304. b. pl. 56.], that without this word *murdered* in the indictment he ſhall not be adjudged a murderer, although the words "*of malice afore-* "*thought and voluntarily and feloniouſly ſlew*" are in, by CATLYN.

[See ante, 205, b. pl. 6. note (*a*).]

1. Sid. 325. 5. Co. 50. b. 3. El. 202. a.

[1. H. H. P. C. 449]

[2. Hawk. P.C. 503—513. 555, 556. 3. P Wms. 439.]

3. Cro. 465. Dy. 69. 79. 225. 235, 323. 9. E. 4. 26. b. 8. H. 6 20 a. Stam. 130. b. 9. H. 7 5. 2. R. 3. 8. 21. E. 4. 73. 11. H. 4. 16. a. 4. Co. 39. b. 1. Bulſt. 93.

[2. Hawk. Pl.C. 258.]

(26) *Eaſt.* 34. *Eliz.* [3 Cro. 276.] *Week* was appealed by the wife of *Wroth* of murder, the jury ſaid, that he was not guilty in manner and form; and the queſtion there was, Whether they ought to put to the jury the manſlaughter: and therefore FENNER, *Juſtice*, was ſent to the Common Pleas to know their opinions, who returned and ſaid that the jury ought not to be aſked of it. But the Juſtices aſked, Whether he had fled for the fact, or not? And they ſaid, not; and ſo he was diſcharged; but it is otherwiſe in an indictment for murder. *Quære*, Whether the jurors ought to find the manſlaughter without the demand of it ſpecially?

Eaſt. 2. *Car. B. R.* [Lat. 126.] *Baſſuge* was appealed, for the murder of her huſband with a quart pot, by the wife, and it was reſolved by the Court, that if the jury do not find him guilty of murder, ſtill they may of manſlaughter; the reaſon by DODERIDGE, becauſe murder includes manſlaughter.

Fitz. Monſtrans, 35. If a clerk convict make his purgation, and afterwards is arraigned for the felony, he may plead his purgation. 13. *El.* 304. [a. *poſt.*]

(27) A MAN

A man having lands in two hamlets within one vill, deviſes all his lands in the vill and in one of the hamlets by name; nothing in the other ſhall paſs.

Hob. 173. 1. Cro. 72. Roll Cotin. 275. 17. Eliz. 342. b. Plow. 173. Ow. 60, 61. 2. E. 4. 27. 3. E. 4. 28. 4. E. 4. 31. 7. E. 4. 18. 22. H. 6. 7. 27. H. 6. 2. 36. H. 6. 16. 46. E. 3. 26. b. 11. H. 7. 24. b. 34. H. 6. 18. b. 8. E. 4. 6. b. 10. H. 4. 9. b. 9. E. 4. 36. a. 13. H. 7. 17. b. 41. E. 3. 22. a. 25. [3. P. Wms. 322. 2. Black. Rep. 975. 1301. 2. Bac. Ab. 81, 82.]

*(27) A MAN being ſeiſed of lands in a vill and in two hamlets of the ſame vill, by his laſt will deviſed all his lands being in the vill, and in one of the two hamlets by name, and died. The opinion of ſeveral of the Judges was, that nothing of the land in the other hamlet ſhould paſs; for it is to be underſtood that the intent and meaning of the deviſor was, that no more ſhould paſs but that which he had expreſſed; but BROWNE *è contra*, becauſe the principal vill comprehends all the hamlets; for a *præcipe quòd reddat* ſhall be brought in the vill only for the land which lies in the hamlet, and if it be demanded in the vill, and alſo in the hamlet, the writ ſhall abate for being twice demanded. And this is true, but does not apply to a will; and the naming of the one hamlet argues his intent fully &c.

(27) 32. or 33. *Eliz. Carter and Riſbye's Caſe* [Ow. 84. Cro. Eliz. 208. 1. And. 245.] One had a manor in a pariſh called *Odiam*, and other land. And he made a feoffment of all his land in *Odiam* to the uſe of one and his heirs, and of his manor of *Odiam* to the uſe of another and his heirs, and it was adjudged that both uſes ſhould ſtand, by reaſon of the intent, for a general clauſe does not extend to thoſe things which are ſpecially comprized in it. [Cowp 600.]

Eaſt. 6. *Jac. B. R.* † *Lee v. Eyre.* The father made a feoffment in fee of certain land in ſuch a pariſh to h s youngeſt ſon and his heirs, by deed, *habendum* after the death of the feoffor, and made livery *ſecundum formam chartæ*, and ſo all void: and afterwards having land in the ſame pariſh, he conveyed "*all his lands in the ſame pariſh to his eldeſt ſon, not demiſed to the young:ſt*:" and adjudged, that the land intended for the youngeſt does not paſs

Trin. 4 *Jac.* [2 Cro. 110. Nov. 17.] *Street* is a vill, and *Walton* is a vill, and both in the pariſh of *Street*; a fine is levied of "all his land *in Street*;" the land in *Walton* does not paſs. [Cruiſe Fines, 125.]

T. 3. *Jac. B. R.* [Noy, 112.] it was reſolved in the caſe between *Fitzwilliams and Fitzwilliams* ſon to *Sir William Fitzwilliams*, Lieutenant of *Ireland*, that if one deviſe all his jewels, goods, and plate, except the leaſes of *Fourth*, that by reaſon of the exception all his other leaſes ſhall paſs. 2dly, That under a deviſe by one, of all his goods, leaſes ſhall paſs. [1. Br. Caſ. Ch. 127]

Eaſt. 14. *Eliz.* † The Biſhop of *Ely* having manor of a park being parcel of the demeſnes, leaſed all his demeſnes of the manor, and in the ſame leaſe granted the cuſtody of the park; the park itſelf ſhall not paſs.

A Caſe from Ireland.

(28) AN Abbot and Convent made two ſeveral leaſes of two ſeveral parcels of land to two ſeveral perſons by indentures in the year of our Lord 1531 for the term of thirty-one years, both leaſes to commence and determine at one and the ſame time; and afterwards in the year 1535 the ſucceſſor of the Abbot and Convent, reciting both the leaſes *verbatim*, made a new leaſe of both the ſaid parcels to another perſon in theſe words: "Know ye, that we the aforeſaid Abbot "and Convent, the ſaid thirty-one years being compleated "and

A. leaſes for 31 years, and four years after the beginning of that term makes a new leaſe by theſe words: "Know "that I, the aforeſaid "31 years being com- "pleted, have demiſed "and granted all the "premiſes &c. *habend* "*et tenend*' from the day "of the making of theſe "preſents, the term a- "foreſaid being finiſh-

"ed, until &c." Whether this shall commence in computation till the expiration of the former lease, *qu.*
If words are blotted out in a deed by the grantee himself after execution, though in a place not material, it will make the deed void.
[Jenk. c. 6. c. 3. 8. C.] [Al. 76.] Bridgm. 102, 103.
[10. Vin. Ab. 333.]
1. Leon. 199. 23. El. 377. a. 10. Car. Cro. 399. 11. Co. 27. a. 5. Co. 1. Dy. 312. pl. 89. 2. Kebl. 330. 1. Rol. Ab. 849. 50. 1. Ro. Rep. 40.
[3. Bac. Ab. 425.]
[See Dougl. 565.]
Perk. 22. b. Flow. 10. Dy. 97. & 27. & 175. Perk. 122. 10. Co 92. b. 11. Co. 27. 3. Cro. 627. 31. E. 1. Feoffment, 118. 1. 3. H. 7. 15. 5. a. 14. H. 8. 27.

"and ended, have given and granted all the premises to the "said other person, to have and to hold from the day of the "making of these presents (the aforesaid term being ended) "until the end of the term of thirty-one years then next "ensuing and fully to be compleated:" the indenture of which, after the making, signing, and delivery thereof, was defaced and blotted in these words, *from the day of the making of these presents*, but not in such manner but that they might be read after a view of the counterpart of the indenture. And, Whether this lease should take effect to commence the term of thirty-one years after the end of the first thirty-one years, or immediately after the making of the indenture? Also, Whether the indenture had lost the force of a deed by the defacing of these words, or not, was the *quære*. (29) And by the opinion of all the Justices of the Common Bench it shall begin to take effect in possession at the end of the former term, and not before; and this clause, "*from the day of the* "*making of these presents*," is only declaratory of the former sentence, which is obscure to any intent; and if it were not so expounded the lessee should only have a lease for four years, which was not the intention of the parties as it seems. And every grant shall be expounded most strongly for the grantee &c. Wherefore &c. And as to the other point, it seemed to three of the Justices, that the indenture, † which is a deed, had lost the force and validity thereof by this erasure and blotting of the words, although it is not in any material

*[262. a.]

place, * as in the substance of the things contained in the indenture; for when one juror in a panel is withdrawn upon a challenge, the custom is to strike out the name with a pen and ink, and not to blot it so but that his name may be read well enough afterwards, and yet he is made to be no juror thereby, but withdrawn out of the panel, Wherefore &c. But BROWNE doubted thereof. But for the first opinion the Court of *B. R. è contra.* And as to the other point, SAUNDERS, *Chief Baron*, and other Justices, *s.* DYER and WES-

Perk. 26. a.

22. H. 6. 59.

[Co. Lit. 225. b. and note (1) there. Shep. Touch. 66. Bul. Ni. Pri. 171, 172. 267. 3. Bac. Ab. 463. 4. Term Rep. 320. 346.]

(29) *East.* 8. *Jac. C. B.* [Godb. 166.] The case was thus: One *Craddock*, lessee for 100 years, made a lease to another for 40 years, and afterwards made a lease to another "*habend' for* 21 *years* "*from the end of the said term of* 40 *years, to begin and to be accomplished from these presents.*" And it was clearly agreed, that this is a good lease in reversion for 21 years, and the latter words void; or as COKE said, the latter words ought to be construed a future interest presently, and shall be after the expiration of 40 years, and by the first words. And the opinion of this Book was affirmed by COKE; and in *Warberton*, in this case, *nullo contradicente.*

† The last edit. *is et fuit*, but the old one of 1592 *que est fuit.*

TON,

ton, afterwards, 1. *Eaſt.* 10. Queen *Eliz.* ſubſcribed, declaring their opinions as above, 1. that the deed had loſt its force, being made by the leſſee himſelf &c.

Arundell *againſt* Combe.

(30) THE condition of a bond was ſuch, that "whereas "one *J. S.* is condemned in twenty pounds debt "in the Common Pleas at the ſuit of the obligee, and whereas "alſo the ſaid *J. S.* hath exhibited a bill of complaint againſt "the ſaid obligee in the *Whitehall*, if the ſaid *J. S.* do not "prove the material allegations therein contained to be true "by the *utas* of *Saint Hilary* next by witneſs or otherwiſe, "then if the ſaid *J. S.* his executors, or aſſigns, pay or cauſe "to be paid to the ſaid obligee the ſaid ſum of twenty pounds "that then &c." and the date of the bond was the 19th of *October* in the 7th year of the preſent Queen, The defendant pleaded the death of the ſaid *J. S.* before the ſaid *utas*, and after the making of the writing aforeſaid, 1. on the 16th day of *December* in the 8th year at *O.* in the county of *S.* and this &c. And the plaintiff demurred. See 15. *H.* 7. 13. And it ſeemed by the opinion of the Court that it is *prima facie* a good plea.

The condition of a bond being that "if *J. S.* "prove not the ſuggeſ- "tion of a bill by the "utas of Saint Hilary, "then if he or his ex- "ecutors pay twenty "pounds &c." the death of *J. S.* before the utas, is a good plea in bar.

Co. Lit. 206. a. 3. Cro. 398. Mo. 432. Pupb. 48. 14. E. 4. 3. a. 38. H. 6. 2. b. 15. H. 7. 4. 2. b. 2. Co. 79. b. 8 E. 4. 26. a.

[Freem. 269. Raym. 415. 2. Mod. 102. 3 Mod. 234. Com. Dig. Condition, (D. 2.) Bac. Condition, (Q. 1.) Shep. Touch. 153.]

(30) Mr. *Corbet*, in his lecture in *Furnival's Inn* 2. *Aug.* 1632, took this diſtinction, viz. When by an act executed both conditions become impoſſible, as in the 5. of Coke [fol 21. b.] *Langdale's Caſe*, there the falling of one diſcharges the others alſo. And to that purpoſe he cited theſe caſes following:

Trin. 2. *Jac. Rot* 1616. † *Dade v. Nubye*, in an action of debt, that if the defendant [do not] pay ſuch a ſum on ſuch a day, or fail to pay it three days afterwards, that he ſhould render himſelf to priſon: the obligee died before the firſt day, adjudged that ſtill it is broken. So in *Crop and Beddinfield's Caſe* it was likewiſe reſolved *M.* 34. *El. C. B.* [3. Cro. 277. Mo. 357.]

8. *Jac. B. R.* † *Sir James Skidmore.* When two things are dependant upon each other, there by the act of God preventing one both are diſcharged; otherwiſe &c.

Hil. 2. *Car. Rot.* 858. *Wood's Caſe* [1. Jo. 171. Palm. 513.] *J. S.* deviſed to his wife one hundred pounds to be paid on ſuch a day, and if then it be not paid, that his executors ſhould pay her two hundred pounds at ſuch a day then to come: the wife died before the firſt day the executors are diſcharged.

† *Glover's Caſe, Rot.* 1227.

(31) IT was moved in the Star-chamber for the Almoner, that if a man who is a *felo de ſe* has a † *debt* upon a contract, and not by ſpecialty, Whether he ſhall forfeit it to the Queen with his other goods and chattels, or not, becauſe the

† Orig. *debtor.*

A debt on ſimple contract is not forfeited with the goods and chattels of a felo de ſe.

Mo. 204. 4 Co. 95. a. 18. E 2. Avowry, 223. 229. 15. Aſſ. 1. Statut. 188. 30 E. 3. 4. 18. E. 3. 92. a. 29 Aſſ. 63.

49. E. 3. 5. a. 50 Aſſ. 1. 5. 3. E. 3. Coron. 343. 6. H. 4. 6. b. 1. Inſt. 128. Wentw. 23. [Cro. El. 203. Ow. 22. 12. Co. 2. 1. Hawk. P. C. 103.]

the debtor ſhall be driven from his law againſt the Queen; and by the opinion of both the juſtices this debt ſhall not be forfeited. *Simile E.* 16. *E.* 4. 7. [4. b. pl. 9.]

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* Trinity Term,

9. Queen Elizabeth.

In falſe judgment on a writ of right cloſe in ancient demeſne, *non fuit informatus* being pleaded, the Court reverſed the judgment on theſe errors aſſigned: That in the ſtile of the Court no mention is made before what Judges. 2. No officer is named in the award, or the return of the ſummons. 3. No day prefixed to the tenant in the ſummons, but *ad proximam curiam*. 4. Tenant within age made attorney. 5. No warrant of attorney entered for plaintiff. 6. No names of ſummoners returned. 7. Tenant within age and in by deſcent ouſted of age. 8. That the Court below refuſed to receive a demurrer.

Dy. 268. pl. 17. Noy, 74. pl. 322. Ow. 50.

(32) A WRIT of falſe judgment was ſued laſt Term out of Chancery, returnable in the Bench this Term, of a judgment in the Court of *Godmanchеſter*, which is ancient demeſne, and parcel of the poſſeſſions of the duchy of *Lancaſter*, upon a writ of right cloſe proſecuted there in the nature of a writ of aiel. And the ſheriff came thither to the court, but the ſuitors there refuſed to make a record thereof, but would adviſe &c. And in the mean time an injunction was ſued out of the duchy chamber at *Weſtminſter* directed to the party plaintiff, his counſellors, and attornies, and alſo to the ſheriff, to ſurceaſe from proſecuting or making execution or return of the writ upon pain of two hundred pounds, but notwithſtanding this the ſheriff returned the writ as above; upon which return iſſued a *diſtringas ſectatores* returnable the laſt day of this Term. And becauſe the ſuitors who refuſed to make the record were ſeven in number, and named by their proper names in the return of the ſheriff, therefore the *diſtringas* iſſued againſt thoſe ſeven only although there were more ſuitors there: and theſe ſeven might bring in and avow the return of the record; and on the octave of *Saint Michael* following ſix of them appeared, and the ſeventh was ſick even to death, and they prayed that the Court would receive the record from the hands of them ſix, and produced the record in court; but the Court would not, but awarded a new *diſtringas* againſt them all ſeven, returnable *Cras Martini*; and the iſſues of thoſe ſix who appeared were ſaved. And in the mean time the ſuit in the duchy chamber was diſcontinued, and one of the plaintiffs in the falſe judgment, *ſ. Tryoe*, who formerly appeared, was nonſuited and ſevered by award, and

21. E. 3. 61. Faux Judgment, 8. 12. H. 4. 23. 1 E. 3. 9. 10. a. 26. E. 3. 61. 29. E. 3. 26. 2. E. 3. 36. 31. E. 3. Faux Judgment, 28.

the

the others received to profecute by award becauſe he was an infant. And in *Hilary* Term, in the 10th year, errors were aſſigned on this judgment. (33) The firſt defect or error was, becauſe that in the ſtile of the Court no mention was made before what bailiffs, ſuitors, or judges, the Court was holden. 2dly, Alſo no miniſter or under-bailiff is named in the awarding of the precept of ſummons, nor in the return thereof. 3dly, Alſo no day certain is prefixed to the tenant when he ſhall appear by the ſummons, but generally at the next court. 4thly, Alſo the appointing of an attorney by the tenant who appeared to be within the age of twenty-one years. 5thly, Alſo no warrant of attorney (*a*) is entered for the demandants, although the record makes mention that they appeared by attorney. 6thly, Alſo no names of the ſummoners are returned. 7thly, Alſo where the tenant (*b*) ſhewed a dying ſeiſed, and a deſcent to him of the land from his father and being within the age of * twenty-one years prayed that the parol ſhould demur in the plea which was in the nature of a writ of aiel, he was ouſted of his prayer, and compelled by the Court to anſwer. 8thly, Alſo the refuſal to receive any demurrer in law in this Court, although the plea be inſufficient. And to theſe errors aſſigned, the attorney for the defendant who was *C.* pleaded *non ſum informatus*, upon which the Court proceeded to the examination of the errors above. And by good conſideration the judgment was reverſed this Term. And although the cuſtom were in the Court as is ſuppoſed in the record, that an infant there impleaded of the age of ſixteen years, or more, ſhall be driven to anſwer without having the parol demur, yet it ſeems that inaſmuch as the defendant hath not maintained that cuſtom here in the Bench, which would be iſſuable and tried by the country, the Court here ought not to have regard to the ſaid cuſtom, which is erroneous at common law; and although by the cuſtom he is competent at the age of ſixteen years to make alienation of his land, yet ſhall he not by that be driven to anſwer to a *præcipe quod reddat* at ſuch an age by *M.* 9. † *E.* 3. 21. And afterwards the judgment was

3. E. 3. 9. 1. H. 7. 11.

20. E. 4. 2. 40. E. 3. 16. 3. H. 6. 16. 48. E. 3. 10. b. 35. H. 6. 12. a. N. B. 27. b. Ja. Cro. 571. 1. Cro. 154.

[Cowp. 21. Str. 563.]

[1. Hen Bl. 75.]

3. Cro. 105. 19. H. 6. 67. 41 E. 3. 12. 3. H. 4. 10. 7. H. 4. 4. 16. 8. H. 4. 345. 1. H. 7. 13. 15. H. 7. 14. 11. H. 4. 44. 88. 14. H. 4. 16. Dy. 180. a. 225. a. 230. b. 330. pl. 18. Bridg. 74.

* [263. a.]

6. Co. 4.

Pal. 228.

[Robinſ. Gavelk. 221.]

3. Jac. Cro. 80. Perk. 435. Dier. 301. pl. 48. 21. E. 4. 24. 11. H. 4. 33. 5. H. 7. 31 a. 37 H. 6. 5. 39. E. 3. 2. 9. E. 3. 38. 5. H. 7 41. a. 11. H. 4. 30. a. 31. E. 3. Age, 35.

[T. 9. E. 3. 22. b. pl. 15.]

(*a*) By 18. *El.* c. 14. no judgment after verdict ſhall be ſtayed or reverſed for want of any warrant of attorney; but now ſee 25. *Geo.* 3. c. 80. § 1. 13. & 19. and for amendment of records after error brought ſee Dougl. 114. 5. Bar. 2730. 1. Term Rep. 783. 3. Term Rep. 659. 749. 1. Com. Dig. 442. 320. 321.

(*b*) But the parol ſhall not demur for the nonage of the *demandant* in a writ of ayel. Booth Real Act 201. 2. Inſt. 191. *Ante*, 137. pl. 23.

reverſed,

29. E. 3. 5. 1. E 3. 10. 2. Inſt. 138.

reverſed, and that the plaintiff ſhould be reſtored to all that which he had loſt by reaſon of the judgment aforeſaid, but by that he could not recover coſts or damages of any ſuit in the one court or the other; and the ſuitors aforeſaid *in miſericordiâ* aſſeſſed by the Juſtices at ſeven pounds, *viz.* each twenty ſhillings. See other defects and errors in this caſe *M.* 13. [23.] *Eliz.* fol. [373. p. 13. *poſt.*]

Eſtoſt's Caſe.

A. with his wife and *B.* purchaſes lands to them and the heirs of *A.* and *B.* *B.* releaſes to *A.* only. The wife takes nothing in *B.*'s moiety. But *A.* takes a fee tho' there was no mention of his heirs, for his intereſt before was a fee-ſimple. *Secus* had ſuch releaſe been to the wife, who had only a life eſtate.

Hil. 10. El. Bendl. Rep. [32. Benl. 195. 1. And. 45. S. C.] adjudged accordingly.

45 E. 3. 5. b. 4. H. 6. 20. 11. R. Remitter, 12. 9. E. 4. 37. 30. E 3 Cui in Vitâ, 20. 40. Aſſ 7. 35. Aſſ. 15. Dy. 149. b.

(34) A HUSBAND and wife and a third perſon purchaſed land to them, and to the heirs of the huſband, and of the third perſon; the third perſon releaſed to the huſband only, and without mention of his heirs, all the right, eſtate, title, intereſt, and demand which he had, or which he and his heirs might claim in the ſaid land &c. And afterwards the huſband and wife made a leaſe for years of all the land, rendering a rent to them and the heirs of the huſband: and afterwards the huſband died; and for the moiety of the rent being in arrear after the death of the huſband his heir diſtrained on the leſſee, and he brought replevin. And in the avowry the caſe appeared, upon which there was a demurrer. And the caſe was argued at the Bar, and in the next *Hilary* Term it was argued at the Bench by all the four Juſtices in one day: and *Barham* began at the Bar. And by the opinion of the Juſtices both points of the caſe were ruled for the heir for the moiety of the rent, *s.* firſt, that the releaſe made to the huſband only ſhould enure to him alone, and not to his wife: and ſecondly, that there was no need to have the words *his heirs* in the releaſe, but that all the moiety, eſtate, and intereſt that the releaſor had, veſted, and was tranſmitted into the perſon of the huſband in fee ſimple, becauſe he had a fee ſimple in the entire land at the time of the releaſe made, ſo that it could not enure to make or enlarge the eſtate to him who had equal intereſt and * eſtate with him who made the releaſe. But if the releaſe had been made to the wife, there it would have been neceſſary to have words *to her heirs*, becauſe ſhe had before in jointure only an eſtate for the term of her life. Wherefore &c. And the grounds of the diverſity of releaſes were ſearched for in *Littleton's Tenures* in the three chapters, *s.* of Tenants in Common, Releaſes, and Confirmations;

Moore's Rep. fol. 43 b. Fitz. 305. Cro. 129. pl. 27. Dy. 319. Roll Contin. 473 19 H. 6. 17. a. 22. Lit. pag. 304. 37 H. 8. B. N. C. 296. Alienation, 31. Lit. 467. Br. Releaſe, 96.

* [263. b.]

Lit. 465. 304. 45. Aſſ. 7. 43. 46. E. 3 174. 19. Br Gard. 6. Br. Waſt. 44. Lit. 68.

mations; and the books of 40. *E.* 3. [41. pl. 28.] in *Warrantiâ Chartæ*, 46. *E.* 3. [17. a.] in Waſhe, & 19. *Hen.* 6. [16. b. pl. 37.] in the Aſſiſe at *Hertford*; and 33. *H.* 6. [4. & 5. pl. 14.] in the Joint-tenancy in a manor to which an hundred was appendant, & 10. *E.* 4. [3. pl. 6.] for the Feoffment between Coparceners, &c.

[Co. Lit. 9. b. 185, 186. 193. 273 b. 254. Gilb. Ten. 67. Shep. Touch. 324.]

Dame Arundel *againſt* the Earl of Pembroke.

The King grants a commiſſion out of the Court of Augmentations to aſſign to the wife of an attainted perſon the third part of the lands of her huſband. Aſſignment by the commiſſioners of the third part of the rent of an houſe, though confirmed by the King and accepted by the widow, is bad, as not purſuing the authority, which was only to aſſign lands, and the confirmation of the King cannot make that good which was merely void. Nor has that Court any power to aſſign dower at all to the demandant; it ſhould be in Chancery. [3. Vin. Ab. 421.]

(36) DOWER was brought by *Dame Arundel*, late wife of *Sir Thomas Arundel* (who was attainted of felony in the time of *Ed.* 6. upon the ſtatute of 1. *E.* 6. c. 12. and title to dower ſaved to his wife by act of parliament), againſt the Earl of *Pembroke* in *Shaſton*, who made a default after appearance. And before judgment a termor of a common inn in *S.* prayed to be received by the ſtatute of *Glouceſter*, c. 11. and ſhewed a leaſe by indenture made by the ſaid huſband after the coverture to one whoſe aſſignee he is, and ſhewed the attainder of the felony in conſpiring to the death of *J.* late duke of *Northumberland*, being one of the privy council of the late King *Ed.* 6. firſt by the verdict before commiſſioners of *oyer* and *terminer*, and afterwards a confirmation of it by act of parliament &c. And that the King *Edward* 6. granted a commiſſion under the ſeal of the Court of Augmentations to aſſign the third part of the land of the ſaid *Sir T.* to his ſaid wife in dower; and that by virtue of that commiſſion the third part of the rent reſerved upon the ſaid leaſe of the aforeſaid common inn was aſſigned to her. (37) And alſo that afterwards the ſaid King, reciting the ſaid commiſſion and aſſignment, by his letters patent under the great ſeal of *England* ratified and confirmed the eſtate of the ſaid dame in her dower &c. And ſhewed further the agreement and acceptance of the wife thereof; and concluded that the ſaid plea is by colluſion and fraud between the demandant and tenant to make him loſe his term, Wherefore &c. And by the opinion of the Court this matter is inſufficient, firſt, Becauſe the Court of Augmentations (*a*) had not any power to aſſign dower to the demandant, or to any other wife, but that ought to be againſt

See the record of this caſe, N. E. tit. Dower, pl. 6. fo. 173.

[2. Term Rep. 169. Comp. 19. 1. Term Rep. 705. 1. Hen. Black. 155. 2. Br. Ch. Caſ. 166. 3. Term Rep. 665.]

Ras Dower, 6. Dy. 97. b. 40. b. Litt. 55. 2. Inſt. 322, 323. Co. it. fol. 340. 34. b. 46. Aſſ. 41. 2. Cro. 851. Poſt. 326. 1. E. 6. B. N. C. 372. 7. H. 6. 3. Perk. 67. 68, 69. 8. R. 2. Dower, 184. 6. E. 3. 50. 8. Co. 52. B. Dower, 61. 9 Co. 16, 17. 26. H. 8. 3 a. 2. E. 4. 3. b. 9. E 4. 30. 37, 38. 45. E. 3. 9. b. 7. H. 7. 10 Eliz.

(*a*). This court, erected by 27. *H.* 8. c. 27. was diſſolved 1. *Mar.* ſeſſ. 2. c. 10.

the

Stat de Gloſter ca. 11. 21. H. 8. c. 15. [Cowp 48. 2. Dougl 53. 1. Term. Rep. 95.] Raſt. fol. 137. 1. Keb. 429. 14. 27. H. 6. 4. 7. 1. H. 7. 9. & 17. 7. H. 7. 11. Plow. 399. Dy. 292. pl. 70. Mo. 733. R. 157. 1. Keb. 912. [Of reſceit by a termor ſee Booth Real Act. 69. 5. Com. Dig. 391. and ſee Salk. 391. pl. 31.]

the King in the Chancery &c. Alſo the aſſignment of the rent is not warranted by the commiſſion &c. and then the confirmation cannot make that good and legal which was merely void &c. Yet if there was good matter to bar the demandant of her dower by any matter happening after title to dower, the termor ſhould be well received in this action to ſhew it for the ſafety of his term. And afterwards judgment was given for the demandant, but with ſtay of execution, becauſe the Court * would adviſe till the next Term; when it was awarded to the demandant.

* [264. a.]

Roſwell's Caſe.

In Chancery. SOMERSET.

A woman copyholder for life marries; the reverſion after the death, ſurrender or forfeiture of the wife, is granted to *A. B.* and *C.* ſucceſſively according to the cuſtom. The huſband ſurrenders to *A.* who is admitted and dies. *B.* dies. *C* has no right, as the wife may claim after her huſband's death, till which time the lord may retain it as occupant. But if they releaſe all her intereſt to *C.* the lord is bound to receive him.

30. H. 8. B. N. C. 140. Dy. 361. Perk. 117. 2. Rol. Ab. 150. 1. Sty. 275. 1. Cro. 205. 1. Rol. Ab. 504. Mo 753. 9. Co. 106. a. Poſtea, 321, 322. [Gilb. Ten. 240. Lex Cuſtum. 137. Co Lit. 59. b. and note (2) there. 2. Com. Dig. 500. 2. Bl. Rep. 1046.]

4. Co. 28. b. 23. Perk. 612. 2. Keb. 824. [And ſee 5. Burr. 2764. 1. Term Rep. 600. 2. Term Rep. 197. 485.]

(38) A WOMAN, tenant for term of life of a copyhold parcel of the manor of *Yorels Preſton*, took an huſband, and the reverſion of the ſaid copyhold was granted to three for the term of their lives ſucceſſively, according to the cuſtom of the manor. And afterwards the huſband of the ſaid woman made a ſurrender to the uſe of the firſt of the ſaid reverſioners for the term of his life, to whom the lord granted it by copy alſo for the term of his life, and ſo he was admitted tenant; and afterwards he died, and the ſecond in reverſion likewiſe: and the third (living the huſband, and his wife who made no ſurrender) prayed to be admitted to the copyhold: and his copy was, "when it ſhall fall in after the "death, ſurrender, or forfeiture of the wife, who was in poſſeſſion. *Quære*, Whether he ſhall have his prayer *de jure*, or not? And it ſeemed to many of the Judges and Serjeants that he ſhall not have it; for living the wife ſhe has right to the copyhold by plaint in the nature of a *cui in vitâ*, or by entry after the death of her huſband: for ſhe never made any ſurrender, or committed any forfeiture, ſo that the reverſion could take effect; but the lord may retain it in his own hands or diſpoſal during the life of the huſband as an occupant. But the caſe was further, that the huſband and wife would releaſe all the right of the wife to the ſurviving reverſioner; and the lord would not receive it, or hold a court for it. *Quære*, Whether he ſhall not be bound in conſcience to do

(38) *Hil.* 2. *Car. B. R.* in *Stacie's Caſe*, [Lat. 182.] DODERIDGE held an opinion, that a copyholder has an intereſt in the rolls of the court, as well as the lord, for it is his evidence. And the lord cannot deny the copyholder acceſs to the rolls. [2. Black. Rep 1030. 1061, 3. Term Rep. 141, 142.]

it?

it? But in the next *Michaelmas* Term it was decreed and ordered, that the lord ſhould hold his court, &c. or avoid the poſſeſſion.

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(39) THE new aſſignment in treſpaſs *quare clauſum fregit, &c.* was thus, *s.* "In one acre of land *or* meadow "lying in a certain field in *S.* aforeſaid, called *Northfield, &c.*" And to this the defendant, as to the aforeſaid treſpaſs newly aſſigned in the aforeſaid acre of land, pleaded not guilty. And for this uncertainty of land *or* meadow of the new aſſignment, and without any abuttals or name to the acre, and alſo the replication to the acre of land only, the jury at bar was diſcharged by the opinion of the Court, for the aſſignment ought to have been without any "*or*," *&c.* and the plaintiff might have the two acres, one of land, and the other of meadow, &c. and no abuttal is ſet out; and beſides the replication is not full, &c.

A new aſſignment in one acre of land *or* meadow, is void for uncertainty; and defendant muſt give a name to the place or abuttals. An. Pen. 2. 8. C. [Bonl. 177. S. C.] [1. And. 31.] 2. And. 103. By. 161. 267. 4. Co. 62. a. 11. Co. 55. Co. Lit. 47. 27. H 8. 7. 14. H. 8. 4. a. 34. b. 9. H. 7. 6. b. 15. E. 4. 23. 20. E. 4. 9. b 22. E. 4. 17. a. Dy. 254. b. 7. E. 6. 27. a. 7. H 6. 5 a. 7. E. 4. 10. 24. 27 H. 4 1. [Br Treſpaſs, 203. 5. Bac. Ab. 284 6. Mod. 117.]

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* Horneby *againſt* Cliſton. * [264. b.]

(40) HUSBAND and wife were termors of a houſe in *Fleet-ſtreet*, called *the Three Conies*, for many years: the huſband alone by indenture made a leaſe of it for part

If a man demiſes *a houſe and ſhops excepting the ſhops*, this is a void exception.

(40) 19. *Eliz. B. R. Dowel's* caſe *in ejectione firmæ* [Cro. El. 6. 3. Leon. 64.] *A.* demiſed all his lands in *Landhurſt* except the manor of *Holbby*, and had no other land there; adjudged on great argument that the manor paſſed.

One leaſed a houſe with the chambers, kitchen, garden, and curtelage, except the garden; it is a good exception, as BENDLOWES ſaid was adjudged in 2. *Eliz.* for the mentioning of them is but ſurpluſage, and then it is no other than as if he had leaſed the meſſuage excepting one chamber. T.

Trin. 7. *Jac. C. B.* † *Miller v Prott*, in treſpaſs in lands in *Broad Hembury* in *Devonſhire*, the caſe was, A leſſee for ninety-nine years, if three other perſons ſhould ſo long live, granted the tenements aforeſaid, and they are his eſtate and term, reſerving one moiety thereof to himſelf for his life; reſolved by the Court, 1ſt, That the exception of the moiety is repugnant and void. So if I grant twenty acres, reſerving one acre or ten acres, for the exception is part of that which is expreſsly named before, but if I grant a manor or a cloſe excepting one acre, that is good, for the grantee has a manor and a cloſe notwithſtanding 2dly, It was reſolved, that although the exception was only for life, ſtill it is void, becauſe the grantee has not any certainty left to him, but only a poſſibility: otherwiſe, if the exception had been but for two or three years; and judgment was given accordingly It is entered 2. *Jac. Rot* — So 13. & 14. *Eliz. Rot* 3057. *Mich*

Hil 19 *Jac. C. B.* † *Maydew*, parſon of *Blackden*, *v Yeaxly*, in debt on bond for the performance of covenants, where it was that the defendant ſhould pay the rent reſerved out of the rectory aforeſaid: and upon order made by the *Lord Hobart*, with conſent of parties, that this iſſue ſhould be tried in *London*, whether there had been payment of the rent or not; he ſaid that it might be tried in *London*, becauſe the payment was not local, for all the glebe was excepted out of the leaſe, and then, although the parſonage was in the county of *Wilts*, nevertheleſs for that the glebe was excepted, there might be payment

See this case in Harper's Rep. fol. 2 b. 1. And. 52. and Bendl. 181.
2. 6. E. 3. 22. E. 3. 8. Hob. 170. 237. 1. Ro. Ab. 344. 2. Ro. Ab. 454. 7. Co. Lit. 47. a.
27. H. 8. 7. 43. E. 3. 10. b. 47. E. 3. 12. 2. H. 4. 19 37. Aff. 11. 7. H. 6. 2. Dy 183. Perk. 641. Dy. 288. pl. 54. Perk. 122. 22. E. 3. 8 Br. Reservat, 1. 1. Inſt. 47. a. Mo. 281. 27. H. 8. 18. b. 31. H. 8. 45. a. 10. E. 4. 18. b. 21. H. 6. 25. See there. Antea, 14. b. 7. H 6 43. b. 19. H. 8. 8. b. Plo. 524. b 153. a. 171. 3 Cro 244 Hob. 170.

part of the years by theſe words, *s.* "the meſſuage or tene-" ment in *Fleet-ſtreet* called the *Three Conies*, with all the " chambers, cellars, and ſhops, &c. *excepting and reſerving* " *to the huſband by name the ſhops for his own and ſole uſe* " *and occupation.*" And within the term the huſband died, and the wife ſurvivor entered upon the leſſee in the ſhops, and was re-ouſted, and brought an *ejectione firmæ*; and the defendant pleaded that he did not eject &c. and this caſe was all found by a ſpecial verdict in *Guildhall* this Term; and in the *Michaelmas* following, the caſe was moved by BARHAM, *Queen's Serjeant*, to have judgment for the plaintiff to recover her term in the ſhops. And WESTON thought that ſhe ſhould have it, for he thought that the exception and reſervation of the ſhops touched upon the whole leaſe, and the ſhops were not leaſed: but DYER *è contra*; for it appears by expreſs words before that the ſhops were leaſed generally, and this reſervation or exception is only ſpecial and temporary, *s. during the occupation and uſe of the leſſor himſelf*, according to 3. *H.* 6. 53. [45. a. pl. 21.] where the trees were not merely excepted out of the leaſe, but that it ſhould be lawful for the leſſor to cut down, give, and fell the trees, &c. Alſo note above, the exception and reſervation is made to the huſband leſſor by his name, *s.* "*John Horneby* only, without ſaying, to his executors or his aſſigns, &c. Alſo note, the exception of the ſhops is *of all the ſhops*, which is directly contrary to the premiſes of the leaſe of them; therefore it is a void exception. And ſo at length were the opinions of the other Judges (*a*).

[1. Wood Conv. 260, 261. Shep. Touch. 75, 76, 77. 3. Com Dig. 332. and Vin Reſervation, T. per tot'.]

in any place; and if the glebe had been demiſed, notwithſtanding, by conſent of parties the payment might be tried in *London*. ...d, It was agreed, that if a parſon leaſe a parſonage excepting the glebe, it is void; and a feoffment of a manor, excepting the demeſnes.

Trin. 36. *Eliz. B. R. Ret.* 767. *Leigh v. Shaw* [Ow. 20. Cro. Eliz. 372.], in *ejectione firmæ* for a chamber, a leaſe was made of the rectory of *Chinkford* in *Eſſex*, and of the globe except the parſonage-houſe, ſaving and allowing to the leſſee a chamber over the parlour; it was adjudged a good leaſe of the chamber to the leſſee, for as by an exception a man may except a thing ſo that it ſhall be intended never to have been leaſed or granted, ſo here when he ſaid, except the parſonage-houſe, ſaving and allowing to the leſſee a chamber, this ſaving makes the chamber as if it had never been excepted.

(*a*) See 19. Vin. 128. marg note to pl. 7. and And. and Benl. who report it differently; and ſee 4. Mod. 11. and 1. Show. 313. 316.

(41) A MAN deviſed his lands of ſocage tenure to be ſold by his executors, and that the money thence coming ſhould be diſpoſed of in legacies ſpecially expreſſed in the ſame will; and one of the legatees, after the proving of the will, ſued in the court chriſtian for the legacy. Whether a prohibition lies in this caſe, was moved. And as it ſeemed to CATLYN, DYER, and SAUNDERS, it does not lie, becauſe the money was aſſets in the hands of the executors, and there is no remedy for the legacy in the temporal court. Yet BENDLOWES ſaid, that it was otherwiſe done before this in one caſe. See thereof *M.* 5. *P. and M.* fol. 151. num. 5.

A prohibition will not lie to the court chriſtian in a ſuit for a legacy to be paid out of money ariſing from lands deviſed to be ſold by the executors for that purpoſe
1. Cro. 396. 1. Ro Ab. 920. G. 9. 1. Brn, 32. 3. H. 6 3. Br. Aſſets inter mains, 2. 2. H. 4. 22. a. 9. E. 4. 47. Execute, 37. Dy. 310. Jen. Cent. 4. ca. 87. Plow. 543. 2. Keb. 841. Nat. Bre. 43, 44. Keilw. 44. Hob. 265. 15. H. 7. 12. Pal. 120. 1. Bulſtr. 154. R, 101. Mo. 858. 1 Leon. 225. [Cro. Jac. 279. 3. Bac. Ab. 489. 3. Salk. 223. 1. Sid. 46 Br. Ch. Caſ. Appendix, 574. Cowp. 264. 1. Hen. Bl. 111. note]

* Michaelmas Term, *[265. a.]

9. and 10. Queen Elizabeth.

(1) A JURY of *Middleſex* was called in the Bench, the firſt day of Term, and ſome appeared, and ſome did not, ſo that there was not a full jury: and neither the defendant nor his attorney came; and thereupon the plaintiff prayed that an inqueſt ſhould be awarded by default. And by the opinion of WELSH and DYER, his prayer ſhall be granted; and to this LEONARD the *Cuſtos Brevium* agreed, and all the Prothonotaries. And of this there are many precedents; for the parties are demandable before the Jury, and if the plaintiff make default, he ſhall be non-ſuited; and if the defendant make default, the Jury ſhall be awarded by default, whether they appear or not. *Vide librum Intrationum* divers precedents accordingly, *i.* that the plaintiff offered himſelf on the fourth day againſt the defendant &c. *ad audiend' jurat' patriæ in quam ſe poſuit &c.* fol. 249. [66. a.] But WESTON and HARPER *è contra*, and HAYWOOD and others, in *B. R.*

The parties at the trial are demandable firſt, and on default plaintiff ſhall be non-ſuited, or inqueſt awarded by default againſt the defendant, though a full jury do not appear.
1 R. 3. 4.
Dy. 92.

12. El. 286. a. 44.
Dy. 214. b. 223.

[See Com. Dig. Pleader (X 1.).]

In account defendant having waged his law, cannot afterwards waive it of part, and confess the action for that, but perform it for the residue, yet he may waive the whole, and plead to the country.

[5. Bac. Ab. 429.]

12. E. 3. 47, 48. Dy. 21. pl. 121. f. 23. pl. 143. 2. Ro. Ab. 199. 14. H. 4. 19. a. 10. E. 4. 8. a. B. Ley Gager, 54. 2. El. 183 b. 18. H. 8 3 a. 15. E. 4. 16. 21. H. 6. 13. 18. H. 7. 4. 27. H. 8. 22. Co. Ent. 48. 38. H. 6. 26. Dy. 101. 76.

[15. Vin. Ab. 79.]

(2) IN account against one as receiver, he [plaintiff] counted of the receipt of divers sums, some by his own hands, and some by other hands. The defendant, as to the sums by the plaintiff's own hands, pleaded *ne unques receiver* &c. and *prist* to make his law; and as to the residue he pleaded to the country, and day given him for his law until another Term: at which day the defendant, for part of the sums of which he had pleaded his law, would have waived his law, and confessed the action of it, and as to the residue would have performed his law. And Whether he might do that without the plaintiff's consent, the Court much doubted: but by the advice of the Court he waived his whole plea of law with the consent of the plaintiff, and pleaded to the country *ne unques son receiver pur accompt render, prist*, and had it: therefore *quære* the law in the case. But afterwards in this Term, by the opinion of the Court except HARPER, he could not have the confession allowed.

The justices ought to certify the rates of servant's wages according to 5. El. c. 4. §. 15. though they continue them exactly as in the preceding year.

Jenk. Cent 6. c. 5. S. C.

[* 265. b.]

(3) IF the Justices of peace, at their meeting in *Easter* sessions, or within six weeks after *Easter*, agree and allow the rates of wages of servants to continue for the ensuing year as they were the year preceding without any alteration or change; Whether they are bound to certify these their opinions or resolutions into the (*a*) Chancery before the 12th of *July*, under the penalty of ten pounds, according to the statute of the 5th year of the present * Queen [c. 4. §. 15.] or not? *quære* well as to that branch of the statute, which see. And by the better opinion at *Serjeants Inn*, the words and spirit of the act being well considered, the Justices ought to make the certificate, &c.

(*a*) But by 1. *Jac.* c. 5. §. 8. they need not certify them into chancery if they be proclaimed according to the directions of the 6th section, but they shall be kept among the records of the county or town-corporate.

Lord Cobham's Case.

In debt against a peer at the *distringas juratt'* the plaintiff, tho' no knight be on the panel, may

(4) THE *Lord Cobham* was sued by one in debt, and they were at issue, and a *venire facias* returned served, and thereupon process continued until the *distringas juratorum*:

torum: and now the plaintiff perceiving that the array and panel were to be quaſhed by challenge by the peer, becauſe no (*a*) knight was returned on the panel, prayed a *ve. fa. de novo*; and by the opinion of the Court he ſhall not have it, for there can be no better form of writ awarded to the ſheriff than the firſt.

not pray a *ve. fa. de novo.*

[But ſee Jenk. c. 1. c. 19. 21. Vin. 225.] 27. H. 8. 22. Plow. 117. Dy. 107. b. 246. B. N C. 221. 328. 465. 4. El. 208. b. 2 R. Abr. 637. 1. Inſt. 256.

(*a*) Now by 24. *Geo.* 2. c. 18. §. 4 no challenge ſhall be taken to any panel of jurors for want of a knight's being returned in ſuch panel, or any array quaſhed by reaſon of any ſuch challenge, any law, uſage, or cuſtom, to the contrary notwithſtanding.

Temple *againſt* Cooke and Wotton.

WARR'.

(5) SIR EDWARD BELKNAP was ſeiſed in fee of the manor of *Baſſet* with the appurtenances, and purchaſed certain freeholds of ſome free-tenants within the ſaid manor, which lay ſcattered in the common fields of *Baſſet*, intermixt with the demeſne lands of the manor, and other lands of copyholders and tenants at will, and for years, parcel of the ſaid manor; all which demeſne lands, freeholds, copyholds, and tenures at will, were encloſed within one ring fence, or hedge with a ditch and quickſet, ſo that it is not certainly known what quantity or number of acres, nor where they lie, which were purchaſed. And he died without heir of his body, and his three ſiſters were his next heirs, and married to *Sir A. Cooke*, *Sir E. Wotton*, and *Dannet*; and *Sir E. Wotton* and *Sir A. Cooke* purchaſed another ſimilar freehold of *Saint-John*; and *Sir A. Cooke* ſurvived; and the ſhare of *Dannet* was ſold to one *Temple*, who brought his writ of partition againſt *Cooke* and *Wotton* the ſon, of the manor of *Baſſet*, with the appurtenances only; *Wotton* confeſſed partition; *Cooke* made a title to the part of *Dannet*, which the plaintiff had purchaſed, and traverſed the tenure *per indiviſum* and in common, which was found againſt him, and judgment thereupon given that partition ſhould be made of the manor with the appurtenances; and a writ directed to the ſheriff to make partition accordingly. (6) And *Sir A. Cooke* ſhewed to the ſheriff and jury this matter of the purchaſe of the ſaid freehold, which is not parcel of the manor, and admoniſhed them to take great care how they made partition of all the contents within the uttermoſt ring, or hedge, leſt they ſhould offend againſt their warrant and oath;

One tenant in common of a manor purchaſes lands freehold, ſo intermixed with the demeſnes as not eaſy to be known; on a writ of partition againſt him he is to ſhew to the jury the bounds of his freehold; but if no one ſhew them, and they make partition as well as they can, it is ſufficient.

Jenk. c. 6. c. 4. S.C.

Dy. 260. b. 4. Co. 70. Co. Lit. 233. b.

4. H. 7. 9.

5. Co. 6.

oath; but did not ſhew any certainty of the ſaid lands purchaſed, nor how far the extent and limits of the ſaid manor reached; upon which the Jury were in great doubt what they ought to do. And now, Whether the defendant, who put in this caveat or cavilling to the inqueſt, ought by law to make a full ſhewing of where the lands newly purchaſed* lie, and how much they are, or the plaintiff ſhould ſhew the extent and quantity of the manor to the jurors, was doubted by the counſel on both ſides, for upon this doubt the Jury, being charged to make partition, and having a reſpite from the ſheriff for fourteen days, did nothing at all; for one of them, named *Wyval*, at the day appointed for them to give their verdict, made default; whereupon the ſheriff returned a (*a*) fine of forty ſhillings, with the reſt of the uncertainty and difficulty of the matter above, and further on account of the ſhortneſs of the time he could not execute that writ. And by the opinion of the major part of the Judges of each Bench, the defendant, *ſ.* COOKE, ought to ſhew the certainty or number of acres of the land purchaſed &c. For the Jury ſhall be diſcharged in conſcience if they make partition of ſo much as can be preſumed, and known by preſumptives and veriſimilitudes, that it is the manor. And although none of the parties had given evidence, yet are they compellable to make partition at their peril; and the law and the Court of neceſſity muſt be obeyed. *Quære* well of this return, and the aſſeſſment of the fine by the ſheriff.

* [266. a.]

[2 Crompt Pract. 317. 5. Com Dig. 311. 3. Bac. Ab. 211. Imp. Sheriff, 471.]
10. Aſſ. 21.
Plow. 8.
Dy. 337.

(*a*) If a juror in a leet departs without giving his verdict he ſhall be fined by the ſteward, 8. Co. 38. b. And ſee ib. 41.

A *ceſtuy que uſe* before 27. H. 8 procured his feoffees to execute an eſtate to him and his wife of part of the lands in uſe, and after that year died ſeiſed of the reſidue. Whether taking her eſtate therein is a bar of the widow's dower without an expreſs averment that ſuch eſtate was for her jointure, *quære*.
6. El. 248. a. 6 El. 228. a. Dy. 222. pl. 12.

(6) A CESTUY QUE USE in fee of lands and tenements to the value of one hundred pounds *per annum*, married in 22. *H.* 8. And after the eſpouſals the huſband, at the requeſt of the friends and parents of the wife, cauſed the feoffees to execute an eſtate to him and his wife, and to the heirs of the huſband, of lands and tenements to the value of twenty pounds *per annum*. And afterwards he purchaſed more lands and tenements. And after the ſtatute of 27. *H.* 8. [c. 10.] the huſband died ſeiſed of all the reſidues; and the wife took the rents and profits of the ſaid lands and tenements to the value of twenty pounds by the year, agreeing to her eſtate

eſtate therein. And afterwards ſhe brought a writ of dower for the third part of the reſidue of all the lands and tenements &c. And in the deed of the eſtate which ſhe took jointly with her huſband, no word is there contained that it was for jointure, or for the dower of the wife. Whether this matter generally alleged without averment that it was for jointure or for dower, ſhall be a bar to the dower or not, *quære* well, for the words of the ſtatute of 27. are expreſsly for the jointure of the wife.

Dy. 337. pl. 17. 4. Co. 1.

Wykes's Caſe.

(8) IN the city of *Glouceſter* are two ſheriffs by their charter, and one of them was ſued with two other perſons in a writ of *entry in the quibus*; and upon the original writ the ſheriffs returned the ſummons againſt the two, but for the ſheriff whoſe name was *Wykes*, they returned that he was the ſame perſon as was ſued, and therefore he could not ſummon himſelf: and upon this return the tenants all appeared by attornies, and pleaded to iſſue, which was tried for the demandant at the laſt aſſizes; and now in arreſt of judgment this matter * was objected, &c. *See H.* 18. *H.* 8. fol. 5. [*M.* 19. *H.* 8. 3. a. pl. 16.] by the opinion of FITZHERBERT, that the ſheriff ſhall be amerced for ſuch return, becauſe he may ſummon himſelf. *Quære.*

To a writ of entry, that the ſheriff is defendant, and cannot ſummon himſelf, is a good return.

1. And 10. [Bendl. 146.] } S.C. N. Ben 39]] }

29. H. 6. 13. 11. 8. H 6. 12. 29. a. 11. H. 4. 14. 18. E. 4. 7. 21. H. 6. 10. b. Dy. 288. 7. H. 8. 3. a. 10. H. 8. 3. 21. 34. H. 6. 16. 29. 8. H. 6. 12. 29. [Dalt. Sheriff, 153. 19. Vin. Ab. 444.]

* [266. b.]

(8) And as to the ſummoning of the within-named *Thomas Wykes*, I certify to the within-named Juſtices, that the ſaid *Thomas Wykes* and I *Thomas Wykes*, ſheriff for the † *city* of *Glouceſter*, am one and the ſame, and not other or different, and therefore I the aforeſaid *Thomas*, and *Hugh Hyde* the other ſheriff of the city aforeſaid, cannot ſummon myſelf according to the exigency of that writ. And this was adjudged a good return.

† Orig. *comitat'*.

Sanders *againſt* Spencer.

(9) ONE *Spencer*, an innkeeper of *Brodeway*, was ſued in an action upon the law and cuſtom of the realm, by one *Sanders*, for a piece of cloth ſtolen out of the inn by ſome delinquents. And he for his excuſe ſhewed that he

WORCESTER.

If an hoſt requires his gueſt to lock up his goods in ſuch a chamber, or he will not warrant their ſafety, and the gueſt ſuffers them to lie open in an outer court, the hoſt is not liable if they are ſtolen.

(9) *H.* 3. *H* 4. *Rot.* 16. *Midd'*. By the law of the land a common innkeeper is bound to warrant goods of his gueſt. So *Eaſt.* 9. *H.* 4. *Rot.* 69. *Midd'*. Action for two horſes. *M.* 15. *H.* 4. *Rot.* 6. *Eurr' Will' Cowper verſ. Robert de Croydon*, innkeeper, for a horſe.

gave

22. H. 6. 98. b. 9. H. 6. 45. 8. Co. 32. a. 3. Keble, 73. 8. E. 2. Detinue, 59. Mo. 65. a. 22. H. 6. 21. 4. Mar. 158. b. 42. E. 3. 11. a. Co. 4. 84 a 2. H. 4. 7. 6. 42. Aſſ. 17. Mo. 79. pl. 342. [1. Danv. 17. Bul. Ni. Pr. 73. 1 Salk. 18. and ſee 5. Term Rep. 273.] In an action againſt an innkeeper for goods ſtolen out of his inn, the declaration muſt ſhew that he kept a common inn. [1. Danv. 18. 5. Com. Dig. 210, 211. and ſee Bac Tit. Innkeeper (C) per tot'.]

gave warning to the plaintiff that he ſhould lay his goods in packs in a certain chamber within the inn, under a lock and key provided for that purpoſe, and that if he would do ſo he would undertake to warrant them ſafe, otherwiſe not; but he, notwithſtanding the ſaid admonition, laid them in an outer court at large, where they were ſtolen by the default of the plaintiff himſelf, &c. upon which the plaintiff demurred in law. And the opinion of the Court was againſt the plaintiff.

And note, that it was not contained in the writ, nor in the count, that the defendant kept a common inn, &c. Therefore by 11. *H.* 4. [45. a. pl. 18.] and by the practice in all the entries in the New Book of Entries, it is bad.

A. builds a ſhop on a waſte in the king's manor, and pays no rent; the king grants the manor to *B.* who neither enters nor takes rent for the ſhop *A.* dies in poſſeſſion, his ſon enters. This is no deſcent. [17. Vin. Ab. 217.] Prerog. Regis, c. 13. 1. H. 7. 5. N. B 4. a. 6. Co. 30. a. 2 H 6. Colour, 2. 2 Aſſ. 24. 28. H. 8. 24. 6. Co. 99. b. 19. H. 6. 21. 22. E. 4. 13. Lit. pl. 387. Plow. Queries, fol. 27. b. Fitz. 4.

(10) THE Queen was ſeized of the manor of *Beverley* in the county of *York* in fee in right of the crown. A ſtranger erected a ſhop in a vacant plot of the manor, and took the profits thereof, without paying any rent to the Queen for the ſhop: and afterwards the Queen granted the manor in fee to the Earl of *Leiceſter*, and he never entered into the ſhop, or took any rent for it. And afterwards the occupier of the ſhop died in poſſeſſion, and his ſon entered. Whether he ſhall be adjudged in by deſcent or not, was the queſtion. It ſeemed to WHYDDON, SAUNDERS, DYER, and CATLYN, that it is not a deſcent; but MANWOOD and WRAY, *Serjeants*, *è contra*.

(10) If the king be ſeiſed of a manor, and *A.* intrude into an acre parcel thereof, and build a houſe, and afterwards the king aliene the manor to *B.* and *A.* continue, and die, it ſeemed to *Plowden* in his 381. [373.] query, that by the intruſion and building he hath not gained any eſtate in poſſeſſion. *Mil.* 31. *El. B. R. Rot. Bury v. Robert Goodman* [Ow 25. 2. Leon. 147]. *A.* intrudes upon the king; the king grants it to *B.*; *A.* continues in poſſeſſion, and dies ſeiſed. Whether that tolls the entry of *B.*? And the better opinion is, that it does not toll it, for the Court gave a day to COKE (who argued that the entry was tolled,) to ſhew cauſe why judgment ſhould not be given againſt him.

M. 37. and 38. *Eliz. B. R.* It was agreed upon evidence that the lord might here grant over his intereſt without entry upon the occupier; but if he had entered, and the other continued in poſſeſſion. it is otherwiſe, for then it is diſſeiſin.

Butler *againſt* Crouch.

The lord having let one hundred years paſs without claiming his villein, or his iſſue, cannot after that ſeize them.

(11) *MEM.* That one *Butler*, of the county of *Glouceſter*, made an entry into certain lands and tenements of *W. Croueh*, of the county of *Somerſet*, as into lands purchaſed

chaſed by his villein, and thereof made a leaſe for a term of years to his ſervant, who entered, and was ejected by *Crouch*, againſt whom he brought an *ejectione firmæ* in *B. R.* in the county of *Somerſet*. And *Crouch* pleaded not guilty. And in this Term a ſubſtantial Jury of the county of *Somerſet* of Eſquires and Gentlemen were charged upon this iſſue: and upon the evidence this doubt was raiſed, That if there be grandfather, father, and ſon, and the grandfather is a villein regardant, and the father departs out of the manor, and remains ſo without returning to the manor for the ſpace of ſixty years, and dies without any ſeizure by him, or without doing any villein-ſervice, and in the foreign place hath iſſue the ſon, who alſo lives there where his father died for forty years and more, and is there holden to be and reputed a freeman, without any ſeizure of his body, or any claim made by the lord, * ſo that the writ *de nativo habenda* fails by reaſon of the limitation [by ſtat. 32. *H.* 8. c. 2.] (but *quære* this), Whether now he be ſeizable by the lord as villein or not. And it was holden by the opinion of the Court there that he is not; and this in favor of liberty. Yet *quære* well thereof by SAUNDERS, *Chief Baron*, and DYER, *Chief Juſtice* of the Bench. And afterwards the verdict upon the iſſue above paſſed for *Crouch* againſt the plaintiff. See more thereof *E.* 11. of the preſent Queen, between *Fleyer* and *Crouch*, fol. 283. [*poſt.*]

Dy. 283. pl. 32.

[* 267. a.]

Fitz. Nat. 77.
Raſt. Limit. 3.
4. Co. 11. Inſt. 115.
1. Rol. Ab. 408.
[Of villenage and its abolition ſee 2. Bl. Com. 93—96.)

Landewibrevye College Caſe.

(12) KING *Ed.* 1. in the 12th year of his reign, granted to *Thomas Beak*, then Biſhop of *Saint David's*, and his ſucceſſors, the advowſon of thirty-four churches within his dioceſe in *Wales* to be holden of him and his heirs, ſo that the ſaid Biſhop and his ſucceſſors might appropriate them or any of them to their church of *Saint David's* and *Aberguilly*, or make and annex prebends of them to their ſaid churches of *Saint D.* and *A.* as ſeemed moſt convenient to them. And three years after that the Biſhop, by conſent of the King (as the Biſhop in his inſtrument affirmed), and of the Chapter of *Saint D.* erected and eſtabliſhed a college or collegiate church, and whatever the ſolemnity of a college required he ſupplied by his own authority in *Landewibrevye*, being

Edw. 1. having granted advowſons to the Biſhop of Saint David's, to appropriate to his ſaid church of Saint D. or annex prebends to it, the biſhop erects with conſent of the king a college in *L.* one of the advowſons, and appropriates others for prebends annexed to this new erection: and they continue ſo till the time of Ed. 6. This foundation, though not purſuing the original grant, is a college within 1. E. 6. c. 14.
(Jenk. Cent. 6. c. 7. S. C.)

4. Co. 107. Hob. 123. Dy. 287. Plow. 499. 2. Keble, 167. Pal. 125. 1. Ro. Rep. 463.

being one of the ſaid thirty-four churches. And ordained alſo thirteen ſecular canons there, *s.* five prieſts, four deacons, and four ſub-deacons, and annexed and appropriated thirteen of the ſaid churches to the ſaid thirteen canons, and made them prebends and prebendaries:—and the profits of the church of *Landewibrevye* he divided by appropriation after the death of one *Serlon Clarke*, then incumbent thereof, in common between the prebendaries reſident; and reſerved to the Biſhop himſelf and his ſucceſſors, as to the Dean, a place and ſtall in the choir and chapter; and alſo viſitations and corrections, as in the church of *Saint David's* was accuſtomed. And after that, *s.* in the 18th year of *Ed.* 1. he appropriated to the ſaid deanery one other of the ſaid thirty-four churches, *s. Lannarthe, cum capellâ de Lanina*, by the aſſent of the King. And after that, King *Ed.* 3. reciting the ſaid erection and foundation of the college and all other the premiſes (with ſome doubt of the validity thereof), granted by his letters patent, and confirmed all and ſingular thereof to him who was then Biſhop, and to his ſucceſſors for ever, the ſtatute of mortmain or any other ſtatute to the contrary, or that the ſaid college was erected and founded, and the appropriations and writings aforeſaid were given without the King's licence (as was ſaid), *non obſtante* (*a*): and ſo has *Landewibrevye* continued, and been taken to be a college in all points, till in the 2d year of *Ed.* 6. (13) And now whether it be given by the act of 1. *Ed.* 6. [c. 14.] to the King as a college, or not, * was the queſtion in the exchequer. And by the civilians a college is defined to be "*Societas plurium corporum inter ſe diſtantium, et dicitur* "*collegium propriè cum ſimul habitant, quoniam ſimul colli-* "*guntur, et collegium conſtituitur in eccleſiâ vel per privi-* "*legium conceſſum à ſuperiore poſt fundatam eccleſiam, vel ſi* "*à principio fuit ordinatum quòd eccleſia eſſet collegiata, vel* "*ſi longo tempore vixerint collegialiter, et ſunt in quaſi poſ-* "*ſeſſione collegii; item eccleſia poteſt fieri collegiata cum con-* "*ſenſu epiſcopi et patroni.*" Alſo the ſtatute of 1. *Ed.* 6. [c. 14.] ſays, "*all manner of colleges &c.* and that the Commiſſioners ſhould have authority to eſtabliſh a vicar in *every college being a pariſh-church &c.* And afterwards, *s.*

Dy. 81. pl. 64. Raſt. Monaſt 13.

* [267. a.]

4 Co. 107, 108.

(*a*) By 1. *W. and M.* ſeſſ. 2. c. 2. §. 12. it is enacted, that from and after that ſeſſion of parliament no diſpenſation by *non obſtante* of or to any ſtatute or any part thereof ſhall be allowed, but that the ſame ſhall be holden void, and of no effect, except a diſpenſation ſhall be allowed of in ſuch ſtatute, &c. But ſee 7 and 8. *W.* 3. c. 37. and 1. Bac. Ab. 363.

in

in this Term, it was reſolved by the opinion of all the Juſtices of both Benches except HARPER, that it ſhall be taken as a college, and given by the ſtatute to the King. See *H.* 6. and 7. *E.* 6. fol. 81. for the college of *Grayſtock* in *Cumberlaud.*

LEICESTER.

In treſpaſs, defendant pleads a fiſhery in one county and preſcribes to draw his nets on plaintiff's ſoil in another; this ſhall be tried by viſne of both counties.

[21. Vin. Ab. 105.]

Dy. 161. pl. 46. 264-39. 27 H. 8. 7. 22. E. 4. 50. 27. H. 6, 47. b.

(14) TRESPASS *quare clauſum fregit* at *South-Killyworth*, and fiſhed in his ſeveral fiſhery there &c. and made an aſſault upon the plaintiff, and beat him &c. The defendant as to the aſſault and battery pleaded not guilty, and pleaded a bar to the reſidue; to which the plaintiff made a new aſſignment, ſaying, that the cloſe aforeſaid, and the ſaid place in which &c. were four acres of meadow called *B.* in *South-K.* aforeſaid, and a ſeveral fiſhery in the water of *Avon* at *South-K.* aforeſaid, on the eaſt ſide of the aforeſaid four acres of meadow, other than in the bar &c. To which the defendant pleaded in bar and ſaid, that he was ſeiſed at the time of the treſpaſs &c. of the manor of *Stanford* and *Downe* upon *Avon* in the county of *Northampton*, and of and in the ſeveral fiſhery in the water of *Avon* on the eaſt ſide of the aforeſaid four acres of meadow called *B.* running as well in *South-K.* aforeſaid as in the aforeſaid manor of *S.* and *D.* in the ſaid county of *N.*; and preſcribed to have a ſeveral fiſhery in the ſaid water of *Avon* at *South K.* aforeſaid, as appurtenant to the ſaid manor of *S.* and *D.* and alſo to go upon the ſaid meadow to draw the nets when he fiſhed there. And the plaintiff traverſed the preſcription in both points upon which they are at iſſue. And Whether the trial thereof ſhall be by men of both counties was doubted; but for the iſſue of not guilty it is clearly to be tried in the county of *Leiceſter:* and by the opinion of the Court, the other iſſue ſhall be tried by both counties. See *poſt.* fol. [316. b. pl. 4.]

1. Keble, 290.

8. E. 4. 18. 19. Br. Viſne 86. 10. E. 4. 10. 2. H. 7. 3. 4. H. 7. 18. Cro. 149. pl. 34.

Warneford's Caſe.

(15) THE Queen's tenant *in capite*, his ſon and heir apparent being of the age of ſeven years, is impleaded by divers ſeveral perſons in divers courts for great damages

The king's tenant *in capite* to defraud the executions of creditors made a feoffment con-

ditioned for redemption: this being found by office, and no intention to defraud the king, the heir ſhall not be in ward.

Beginning ante, 193. a 10. Co. 57. a.

Dy. 294, 295.

damages and ſums of money, and fearing the * hindrance and impoveriſhment of himſelf, his wife, and children, by the extent and charge, and incumbrance of his lands for execution of the ſaid ſums, enfeoffed divers perſons on condition that when he or his heirs ſhould pay to the feoffees thirty pounds, or obtain two acquittances for ſo much, then they ſhould make ſuch feoffments, and to ſuch uſes, as he or his heirs ſhould limit or appoint, or otherwiſe the feoffment, charter, and livery ſhould be void. And this feoffment and intent is found by *mandamus* returned into the Chancery, and that there is no other cauſe, intent, or colluſion, *s.* to defraud the Queen, her heirs and ſucceſſors of the wardſhip of the heir or land &c. and that he was dead, his heir within age: *quære*, Whether the Queen ſhall have the wardſhip of any of them upon this office, in the Courts of Wards? And in the next Term it was holden by the counſellors in the Court of Wards, that the † *Queen* hath no title to the wardſhip of the body or lands in the caſe: and ſo it was ordered and decreed in the Court of Wards.

34. H. 6. c. 5. Raſt. Wills. 3. t Ro. Ab. 908. (E.) 3. 10. Co. 56, 57. 47.

6. Co. 76. a. [Shep. Touch. 66] [Wardſhip aboliſhed by 12. Car. 2. c. 24.]

† Orig. *recogn'*.

Herford *againſt* Winde, widow.

In falſe judgment on a writ of right cloſe in ancient demeſne, the writ to the ſheriff was, "that he record the "plaint which *is* in the "ſame court;" and bad, for the plaint is determined by the judgment. Tenant refuſing to appear, but ſeen in court, cannot be eſſoined. Dy. 262.

Dy. 224 pl. 27. 4. E. 4. 27. 11. H. 6. 53.

(Booth Real Act. 222. 2 Wils. 165.)

(16) *MEMORANDUM*, That *Robert Herford* brought a writ of right cloſe directed to the bailiffs of the vill of *Ounceſter* in the county of *Huntingdon* againſt *Dorothy Winde*, widow, in the 18th year of *Hen.* 8. proteſting in the nature of an aſſiſe of *mort d'anceſtor*, *s.* of the death of his father: and upon a return of a jury and ſummons of the party ſhe made default, whereupon the plaintiff alleging the cuſtom there uſed from time whereto memory ran not, that the tenant ſhould have three ſummonſes and three defaults allowed him, and alſo as many diſtreſſes and defaults, and then the enqueſt to be taken by default if the tenant do not appear, or otherwiſe if he be ſeen perſonally in court, and will not appear when he is called, a ſimilar order. And before the laſt diſtreſs ſhe was ſeen in the court, but refuſed to appear, and after that ſhe would have eſſoined by attorney, but was rejected in that, becauſe ſhe was ſeen in court: and ſo the enqueſt was taken by default, and found all the three points

points for the demandant, and damages and coſts. (17) And after great deliberation, judgment was given for the demandant, whereupon the widow brought a writ of falſe judgment directed to *Robert Apriſe, Eſq.* ſheriff of *Huntingdon*, bearing *teſte* 20th of *May*, *anno* 20. *H.* 8. which writ was defective as it ſeems, for it was "*recordari facias loquelam quæ* EST *in* "*eâdem curiâ*," where it ſhould have been FUIT; and alſo in the laſt clauſe there wanted *et aliud breve*, *teſte*: which writ was returned that *the ſteward, the bailiffs, and four ſuitors*, (naming all their names) were preſent in the court when the ſheriff came to return the plea, and required ſight of it, and that the *ſteward and the bailiffs* denied it, omitting *the ſuitors*, anſwering in *Engliſh*, *viz.* "The King's noble progenitors "have granted to us by letters patent that no ſheriff ſhall "ſerve any * manner of proceſs, writs, or warrants within this "his lordſhip, nor none ought to be ſued here but ſuch as be "directed to the bailiffs of the lordſhip for the time being, "and therefore content yourſelf, you ſhall view or record no "plaint hanging or determined in this court &c." Which words in *Engliſh* are not expreſſed in the plea roll, in which roll the refuſal of the ſuitors is expreſsly mentioned as well as of the ſteward and bailiffs. And upon this a diſtreſs was awarded to the ſheriff only againſt the four ſuitors by name with a ſummons againſt the party, and an *alias & pluries* with continuances, *that he did nothing therein, nor ſent back the writ*, for one year. And in *Michaelmas Term*, 21. *H.* 8. Rot. 740. the writ was returned ſerved, and the record brought in by the four ſuitors only into the common pleas, and entered *verbatim*, but nothing further was done, nor any error or defect in the record aſſigned.

F.Nat.18.d. 10.H.7.27.

[See ante, 164. pl. 58.]

Ante, 262.

* [268. b.]

Dy. 250. pl. 86. 262. pl. 32. 1. E. 3. 9.10.

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(18) THE King, lord of a tenure *in capite*, meſne, and tenant by knight-ſervice; the tenant held alſo other lands of the King as of the duchy of *Cornwall* by knight-ſervice. The King granted the Duchy to his eldeſt ſon together with the wardſhip and marriage &c. *non obſtante* the King's prerogative. The meſne died, his heir within age, and in ward to the King: the tenant died, his heir being within age, the King ſhall have the prerogative of the body and marriage of him by reaſon of ward, notwithſtanding the grant

Where general words in the king's patents ſhall not have ſpecial intendment.

[17 Vin. 134—139] 43. Li. Aſſ. 15. B Patents, 32. 39. Plow. 234. 334. Dav. 57. b. Dier 286. a. 13. E. 4. 10. b. 2. Ro. Ab. 195 b. Br. Grants, 32. Forfeiture, 31 11. H. 6. 50 b. 30. Aſſ. 71. 38. Aſſ. 25. 30. Aſſ 31. 12. Aſſ. 13.

14.H.7.12. 12.H.4.13. b. 26.Aſſ.24. 4.B.N.C. 310. 44. E. 3. 17. 18. 44. Aſſ. 41.

B. Sanctuary, 6.

B. N. C. 515. Exemption, Br. 11. 25. H. 6. Exemption, 5.

4 H.6.12.a. 12.Aſſ.35. 15.E.4 7. 43.E.3.12.b. Plow 238.232. 16.E.4. 10. Dy 44. 327.

* [269. a.]

Plo. 335.a. 41.Aſſ.19. 17. E. 3. 39. Petition, 21. 11. Co. 73.

32.E.3. Avowry, 112. 1. H. 7. 23.

Fol. 22. & 25.

grant aforeſaid; becauſe there was no expreſs mention in the patent of this ſpecial caſe, but only by general words. And 22. Aſſ. 26. [49.] of any felons and fugitives condemned, does not ſerve for the goods of traitors. And 28. Aſſ. 13. Cognizance of all common pleas does not ſerve for aſſiſes. And *M.* 8. *H.* 4. fol. 1. The King granted the goods and chattels of felons, and of thoſe who for any treſpaſſes, or any other fault, ought to loſe their lives, or members, or goods, or chattels, and one arraigned for felony ſtood mute, and had judgment of *peine fort et dure*; the grantee ſhall not have theſe goods: *tamen quære.* And 29. Aſſ. 22. [34.] Whatſoever fugitive for whatever cauſe hath entered the ſanctuary of *Weſtminſter* ſhall have impunity of life and limbs, ſhall not ſerve for debt &c. And 42. Aſſ. [5.] A charter of exemption from all enqueſts ſhall not ſerve in felonies or treaſon, without the words, *although it ſhould concern us.* And 40. Aſſ. [21.] The goods and chattels of their own men ſhall not ſerve for other tenants than neifs only. And 43. Aſſ. [10.] by THORPE, A grant of a manor which the King had purchaſed with the liberties belonging to it, ſhall not convey the franchiſes thereto appendant, without words ſuch as, in like manner as they were in the hands of the feoffor of the King. And 19. *E.* 3. [Fitz. Ab. Grants, 58.] A licenſe granted by the King to an Abbot * to appropriate an advowſon, which the Abbot held of the King generally, without expreſſing the tenure, does not bar the King from preſenting at all times. And 17. *E.* 3. [59. b. pl. 58.] Land holden of the Biſhop of *Wincheſter* was conveyed to the King by covin to make the Biſhop loſe his ſeigniory, and the King alſo *ſede vacante*, and granted over by the King to the Carmelite brethren, there this grant was repealed in the Chancery by *ſcire facias.* And ſee *H.* 12. *H.* 4. 7. [*M.* 12. *H.* 4. 25. a.] and *E.* 13. *E.* 4. 7. [10. pl. 6.] and *H.* 10. *E.* 3. 12. & *M.* 4 31. *E.* 3. 10. in *ſcire facias*, and *H.* 32. *E.* 3. 8. in *monſtraverunt*, [Fitz. Ab. pl. 6.] and 1. *H.* 7. [25. a. pl. 1.] in the caſe of *Stafford.* And note by the report of SAUNDERS, *Chief Baron*, that the iſſues, fines, and amerciaments (*a*) by the

(*a*) The following caſe is in the *MS.* Caſes by DYER in the *Inner Temple* Library: "The "mayor and corporation of *Lincoln* have by "charter of the progenitors of the Queen, *all* "*fines and amerciaments for whatſoever offences* "*&c. of all perſons inhabiting and reſident in* "*the city of Lincoln, in the court of either Bench,* "*Chancery, Exchequer, and all courts of the* "*King, and before whatſoever Juſtices, ſitting* "*and giving judgment, which would belong* "*to thoſe progenitors or their heirs, if they had* "*not been granted &c.* A fine of twenty "marks

the Bench, or before the King himſelf in Chancery, or before the Treaſurer and Barons of the Exchequer, or before the Juſtices of Peace, or Eyre, or of Gaol Delivery, or Juſtices of the Foreſt, or before the Steward and Marſhal of the King's Houſehold, or the Clerk of the Markets, are never allowed to any one in the Exchequer without eſpecial words, where formerly they were allowed in *quo warranto* &c. And that the iſſues of tenants, or fines, and amerciaments of conſtables, or other the King's officers are not allowed there without the words, " although they be tenants, ſheriffs, coro- " ners, bailiffs, officers, or miniſters of the King," becauſe they are royal.

9 H.6 27,28. 11. H. 6. 50. 14. H. 6. 12.

Plow. 334. 8. H. 6. 20. a. 2. H 7. 7. Davis Rep 17. 56.

An act of parliament is a judgment, and binds the king. Ante, fol. † 72.

" marks is aſſeſſed by the commiſſioners of oyer " and terminer of eccleſiaſtical cauſes, now lately " in the 16th year of Queen *Eliz.* upon one of " the reſiants of the city, by information made " within the city. Whether the mayor and " corporation ſhall have this fine, *quere*. And " it ſeemed to WRAY and DIER, *Chief Juſtices*, " that they ſhall not have the fine, becauſe the " progenitors of the Queen have not uſed to " puniſh ſuch offence which belongs to eccleſi- " aſtical juriſdiction; and conſequently their " intention was to give the fines for temporal " offences, and not others, Wherefore &c.

(19) A MESSUAGE was holden of the King in burgage, and he granted licenſe to the tenant that he might diſpoſe of " *that meſſuage*" in mortmain without ſaying " *which is holden of us*;" and yet upon good conſideration of 41. Aſſ. [19.] this was holden good to bind the King; and there is no need for the Chancellor to award the *ad quod damnum*, becauſe the grant was *of the ſpecial grace* of the king. See the ſtatute 18. *E.* 3. [ſt. 3. c. 3.] *pro clero* to confirm this, and 41. Aſſ. pl. 19. & 37. A. 6. fol. 23. [qu. 37. Aſſ. pl. 6.] & 21. *E.* 4. fol. 53. [44. b. pl. 6.] Abbot of *Waltham*, & 2 *R.* 3. fol. 7. and 1. *H.* 7. fol. 13. & 3. *H.* 7. [6. b.] where it appears that the Kings have gained the donation and nomination of a corody in the priory of *Norwich* only *per rogatum et curialitatem*, and not *de mero jure*, becauſe the priory was of the foundation of the Biſhop of *Norwich*, and not of the King: and *Ed.* 4. (the corody being full) partly from the inſinuation of the prior, and partly *ex mero motu* of the King, and for a certain ſum of money paid to the King, releaſed the ſaid corody and donation, and diſcharged therefrom the prior, and his ſucceſſors. And the releaſe was adjudged good, although the money was not paid. *M.* 3. *H.* 7. Rot. 10. & 9. *E.* 3.

Where the words *ex ſpeciali gratiâ, certâ ſcientiâ, et mero motu* in the king's patents ſhall have ſpecial intendments. [See 1. Bac. Ab. 363.]

2. Kebl. 226. Plo 332. a. 1. Co. 45. b. 57. 19. E. 3. Grants, 58. 43. E. 3. Entry Conge. 28. Raſt. Mortmaine, 7. B. Patents, 71. 14. E. 4. 5. a. Vaugh. 345.

Plow. 331.

2 H. 7. 17. 21. E. 4. 49. a. 19. H 6. 12. Quare Imp. 3. 28. H. 8. 26. a. 13. H. 7. 14. 6. 11. Eliz. 283 a. Fit 33. n 16. H. 7. 8. a. 7. E. 3. 4. b 41 E 3. 5 b. 19. 32. H. 6. 20.

9. E. 3. 348. Dy. 348. 360. a. 18. E. 3. 22. 58. 29. E. 3. 9. 78. 1 Co. 49. 10. Co. 110. 2. R. 3. 7 a. 22. E. 4. 7. 8. 3. Co. Dodote's Caſe, F. N. B. 33. N.

E. 3. [25. pl. 24.] the King ſeiſed in fee of an advowſon the church became void; and afterwards he granted the advowſon without ſpeaking of the avoidance, the grantee ſhall have it. Otherwiſe is it of a reſtitution to the heir, or the Biſhop by livery. And ſee 43. [*E.* 3.] fol. 22. [pl. 12. & 13.] & † 44. 14. & † *M.* 7. *H.* 4. 10. & 29. *E.* 3. fol. 9. where the King granted "all the advowſons belonging to the priory "of *M.* (which was an alien priory) and *which he had lately* "*granted to his prior*," and this was falſe; and yet the grant holden good. And 32. *H.* 6. 20. & 9. *H.* 6. [27. pl. 30.] of amerciaments within the iſland &c. And 1. *H.* 7. [13. pl. 26.] a releaſe of all debts to the King to one who was lately * ſheriff without naming his office † 32. See the difference between a falſe ſuggeſtion and falſe information in the King's patents, and falſe conſideration, and falſe cauſe, *Trin.* 18. of the preſent Queen, fol. [352. pl. 26. *poſt.*]

* [269. b.]

21. E. 4. 48. 37. H. 8. B. N. C. 310. 6. Co Lord Chandois Caſe.

Eaſt. 36. *Eliz.* 7. Caſe between *Bradourn* and *Bradbourn*, [Cro. Eliz. 149.]

Hilary Term,

10. Queen Elizabeth.

KENT.
NETHERSALE.

Leaſe to three at will, the leſſor by deed without livery, reciting a ſurrender of the leaſeat will, grants *to them and their heirs*, this is void; for it is no confirmation the eſtate at will being determined.

Whether the death of one of the leſſees at will determines the will, *quære*

[Shep Touch. 311, 312.] Co. Lit. 55. Noy, 27. 109. 9. 11. 5. H. 6. 21. 28. 14. 11. E 3. Aſſ. 87. 1. Inſt. 270. b. Dy. 109 pl. 37. 21. H. 7. 38 b. Plow. Morgan & Manxell's Caſe, 2. Co. 5. 10. a.

(20) THE Prior of *Saint John's of Jeruſalem* in *England*, in the 3d year of *Hen.* 8. and his brethren, made a leaſe of certain lands parcel of a commandery named *Swingfield*, to three men at will: and one of the leſſees died, and the two ſurvivors in the 4th year of *H.* 8. took a new eſtate and intereſt of the ſame Prior and brethren of the ſame land by deed indented under the common ſeal of the houſe, *to have and to hold to them and their heirs*; but there was no warrant of attorney to make livery in that deed, nor in any other that he could prove: and the deed recited the former leaſe by indenture made in the 3d year of *H.* 8. and the death of one of the three leſſees, and that the ſurvivors had ſurrendered the indenture, and that now it is cancelled: and thereby by the opinion of the Court the former intereſt at will was determined,

(20) *A.* leſſee at will; the leſſor leaſed to him for years, remainder to *B.* in fee, this is good, although no livery be made; for poſſeſſion countervails livery. *Eaſt.* 38. *Eliz. C. B. Cooper* and *Callambill's* Caſe, [Noy. 56.]

termined,

termined, ſo that the ſecond indenture could not enure as a confirmation to give or enlarge a fee ſimple to the leſſees as it might have done if they had been tenants at will. But *quære* well, Whether the tenancy at will was gone by the death of one of the leſſees or not, for nothing ſurvived by his death &c. And the opinion of a grant made by the leſſor to the leſſee at will for term of life was affirmed in *Hil.* 14. of the preſent Queen [3. Leon. 15. 1. And. 23.] to be a good confirmation to enlarge the eſtate without livery.

Lit. 108. 7. E. 4. 27. a. 2. E. 4. 6. b. 21. H. 6. 37. a. 22. H 6 43. a. 22. E. 4. 38. b. 17. Aſſ. 20. 2. E. 3. 8.

[2. Bl. Com. 146. Com. Dig. Eſtates, (H. 7.)]

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(21) A FINE was levied on a writ of covenant returnable in the Bench on the morrow of the Purification; and the concord made and recorded accordingly, *s.* on the morrow of the Purification *ut oportet*; and the firſt proclamation thereon made on the 5th day of *February*, when the 4th day from the morrow of the Purification was the 6th day of *February*; ſo the proclamation was made before that day, which was much ſuſpected by HEYWOOD of the Queen's Bench to be vicious and erroneous; but others thought differently, for the very day of the * return of the morrow of the Purification is the 3d day of *February*, and if the parties had then appeared there in court, the concord between them might have been well recorded by the Court, and eſpecially becauſe all the Juſtices were then preſent ſince the return was in full Term; and the *quarto die poſt* is only a day of grace. But it would have been more doubtful if the return of the writ of covenant had been the firſt day of Term, *s.* on the octave of *Saint Hilary*, and the firſt proclamation had been on the 22d day of *January*, which is intermediate between the eſſoin day and the fourth day, becauſe of the ſtatute 4. *H.* 7. [c. 24.] and the Court then was not full, nor all the Juſtices then preſent to make a record of the fine *(a)*.

Proclamations of a fine made before the *quarto die poſt* of a return in the middle of Term is good, the Court then ſitting. But *quære* of the firſt return, as the Juſtices do not ſit till the *quarto die poſt*.
Co. Lit. 135. 31. H. 6. 6. 9. Aſſ. 21. Dyer, 361.

* [270. a.]

Dy. 97. 220. pl. 13. 22. E. 4. Jour. 39. 1. Kebl. 205.

[Cruiſe on Fines, 44, 45.]

(22) KING

(*a*) Where the King's ſilver was entered as of *Eaſter Term*, 37. *H.* 8. becauſe the *4to die poſt* was the day of the change of the year of that King; but which ſhould have been 36 & 37. *H.* 8. on account of the relation to the eſſoin day; it ſeems amendable. (See Cruiſe on Fines 129.) The ſtile of the plea roll. in *C. B.* having this very fault was amended about 13. or 14. Queen *Eliz.* as appears from Lord *Sands'* Caſe here copied from the *MS.* in the *Inner Temple* library.

Lord Sands' Caſe.

" A fine was levied xv. *Paſchæ anno* 36. *H.* " 8. between *W. Thorpe* and others, plaintiffs, " and *Thomas Sands* and *Dame Eliz.* his wife " deforceants. And the writ of covenant " bore *teſte* the 20th † of *March* before; and " returnable

† Orig. *Mercurii.*

The King grants for himself, his heirs, and successors, to one to sell wines *non obstante statuto*, without limitation of time but in the patent, and commands his officers to permit it for his life This is only a grant during pleasure, and determines at the death of the King.

See Dy. 92. 1. Sid. 6 Rast. Wynes, 23. R. 132. R 55. 71. 73 154. 157. Plow. 457. b.

(22) KING *Philip* and Queen *Mary* reciting the act 7. *E.* 6. c. 5. against excessive and great prices of wines, of their special grace, certain knowledge, and mere motion, granted for them, their heirs, and successors to *A. B.* that he his factors and assigns, might keep a tavern and victualling-house within the vill of *S.* &c. and should and might utter by retail &c. any kind of wine &c. according to a certain rate, price, and value, and in such manner, form, and sort, and as freely and liberally as they, or any other had done, or might do, at any time before the making of the said act: and moreover their will and pleasure was that the said *A. B.* might have the benefit of the said license from a certain day past notwithstanding (*a*) the act: provided that no other should keep a tavern there &c. giving also commandment by the said presents to all mayors, sheriffs, and others their ministers and subjects, and to their heirs and successors,

(22) 17. *E.* 3. [45. a. pl. 46.] adjudged, that if the King grant land to one by letters patent, and does not say for how long, he shall be lessee at will, and not lessee for term of life; which case Coke affirmed in the Common Bench, *East.* 8. *Jac.* And he denied the opinion of Choke, 5. *E.* 4. 8. 21. *E.* 4. 46. † Cro. 76. † 5. *H.* 5. 3. † Co. Lit. 21. b. [1. Vent. 408.]

(*a*) By 1. *Will.* & *Mar.* sess. 2. c. 2 § 12. it is enacted, that from and after that session of parliament, no dispensation by *non obstante* of or to any statute or any part thereof shall be allowed, but that the same shall be holden void and of no effect except a dispensation shall be allowed of in such statute &c. See Bac. Prerogative (D. 7.)

" returnable xv. *Paschæ prox:* and the *dedimus* " *potestatem* directed to *Sir Richard Lister*, " knight, bore date two days before, which " was not certain, but it was erased in the T " [este] And the writ gave him power to take " cognizances of the husband and wife deforce- " ants, but said nothing of any grant and ren- " der of the part of the plaintiffs, and yet such " grant and render was received and returned, " *quære*, whether without warrant. And the " King's silver of this fine was entered and " enrolled in the same term of *East.* 37. *H.* 8. " which was a mistake, for it should be 36 & " 37. because the day of the essoin of this " first return of the Term was 20th *April* in the " 36th year of *H.* 8. and the 4th day, *s. Wed-* " *nesday*, which was the 1st day of full Term, " was the 22d of *April*, which was the day of " the change of the reign of the King and is " written *anno* 37. but that day of grace hath " relation to the day of the essoin, for fines " &c. And for these errors a writ of error " now is brought in *B. R.* and there yet pen- " deth. And because the King's silver is mis- " entered, *s* in *East Term*, 37. where it should " be 36 & 37. the plaintiffs of policy assigned it " for error before the appearance of the de- " fendants, and prayed a writ of *certiorari* di- " rected to the Chief Justice of *C B.* to certify " the Queen in her Bench if any King's silver " was entered in *E.* 36. *H.* 8. which was the " year preceding, and this writ was returned " according to the truth, that that Term of 36. " having been examined, no entry thereof was " found. And afterwards the defendant in error " appeared and alleged diminution; and there- " upon he prayed an *alias certiorari* to the Chief " Justice of *C. B.* to certify whether any such " entry of King's silver was in *East Term*, in " 36 & 37. *H.* 8. Rot. 94. and he had it † " *sic certificato titulo.*

And note that the stile of the pleas at *Westminster* of this Term was amended in the end of this Term, and made *anno* 36 & 37. *H.* 8. in full Court, according to the rolls of this Term of *Allain Hoord* clerk of the warrants."

† Qu.

to

to permit and suffer the said *A. B.* during his life, to use and occupy a tavern, and to sell wine &c. without hindrance &c. Whether this license, having no certain time of continuance expressed in the body of the grant, be at the pleasure of the sovereign, and determined by the death of Queen *Mary*, or not? And it seemed to CATLYNE, that it is a perpetual dispensation during the life of *A. B.* and that he is in a manner entirely exempted out of the statute, or otherwise the license being once put in ure is immediately determined &c. but DYER and SAUNDERS *e contra*: and that there must be a certain time and limitation of the pleasure of the prince, how long the dispensation and license shall continue. And the last clause of the commandment is void, and shall not create any limitation, but by the death of the prince this commandment entirely ceased, therefore *quære* the law.

19. H. 6. 74. a.

[1. Vent. 408.]

2. Keb. 246. 248. 375. 379. 382. 419. 417. pl. 14. 8. Co. 56. Plow. 457. Dy 253. 258. pl. 100. 94. pl. 29. 3. Kebl. 80. 147. 185. 224. 270. 235. Dy. 100. a. Co. Lit. sect. 66. Fulb. Parl. lib. 2. fo. 45.

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* Walton's Case.

* [270. b.]

(23) HUSBAND and wife seised of a manor to them and to the heirs of the husband. The husband grants the office of steward of the said manor to a father for the term of his life; and by the same deed he grants the same office to the son for the term of his life immediately after the death of his father: and by the same deed he grants a rent charge to them both jointly for the term of their lives, for the exercising and occupying that office out of the manor. The father exercises the office accordingly, and the rent is in arrear, and afterwards the grantor dies, and his wife survives, and the father dies, and his son survives; and afterwards the wife grants a copyhold of the manor to a stranger for life, who is distrained upon in his copyhold by the son, for the arrears of rent which were behind in the life-time of his father, and of the grantor; and he makes avowry; and the copyholder pleads this matter in bar, but he does not aver the life of the wife in his bar; and thereupon the avowant demurs. And by the opinion of the Court, the distress and the avowry are well maintained, and the copyholder shall hold it charged, because he claims under the charge: but

The office of steward of a manor may be granted in reversion to the son after the death of his father grantee for life by the same deed.

See ante, 259. a. pl. 18. The lord grants a rent-charge to *B.* out of the manor, and afterwards grants an escheated copyhold to *A.* holden that *A.* comes in subject to the charge. *Secus* perhaps if an ancient copyholder had surrendered his estate to *A.* and the lord had only admitted him accordingly.

Dy. 80. pl. 58. 3. H. 7. 16 30. Ass. 4. Plow. 53. 7. Co. 11. 1 Bulst. 168.

20. H. 7. 6. 22. Ass. 10. 8 Co. 63. 6. 9. 187. a. Co 4. 23 27. b. Dier 251. 227. pl. 44. 9. Co. 56. 27. H. 8. 23. b.

(23) *Trin.* 8. *Jac.* *Sumers* and *Lorles'* Case, [2. Brownl. 208.] adjudged *contra* in *B. R.* But *Hil.* 28. *Eliz.* it was determined in replevin between the executors of *Sir Will. Cordall* and *Hensted*. [2 Leon. 152. 3. Leon. 59.]

[1. Leon. 4.]

peradventure if an ancient copyholder in fee who was copyholder before the charge made, had made a ſurrender of his copy to the wife to the uſe of a ſtranger, and ſhe by her ſteward had made a grant of it to the *ceſtuy que uſe &c.* according to the cuſtom of the manor, he ſhould have held it diſcharged. And note in the caſe above the truth was, that the wife was dead at the time of the diſtreſs taken. But *quære* whether the ſon ſhall not be driven to ſhew that he hath exerciſed the office ſince the death of his father, for if he have not done that, the annuity and rent is determined, and made not liable to diſtreſs &c. But an action of debt ſhould be brought for the arrears; therefore *quære.*

9.22.E.4.20 3. 19.H.6. 41.5.E 4.8.b.Br Court 72. 15.H.7 1.a. 18. H. 6. 1. a. 21. E. 4. 41.b. 41.Aſſ.3. 38.H. 6. 22. 7.Co.9 b. 39 H.6.22.

When the panel in the grand aſſize is returned the proceſs is a *venire facias* with the names of the jurors inſerted in the nature of an *habeas corpora.*

(24) IN a writ of right the four knights returned the panel of the grand aſſiſe, which were ſixteen names, or twenty. And Whether a writ of *venire facias* or writ of *habeas corpora* ſhould be directed to the ſheriff, was moved as a doubt; and holden that a *venire facias* ſhould. But this is in the nature of an *habeas corpora*, becauſe the names of the jury are put in the *venire facias* to the ſheriff, and if they appear upon this writ, they ſhall be taken, and precedents ſearched for this. And ſee 22. *E.* 3. fo. 17. & 26. *E.* 3. fo. 57. [3. a. pl. 12.] & † 14. *E.* 4.

Dy. 98. 104. pl. 9. 79.

[Booth Real Act. 97.]

15. E. 4. 1.

In debt on bond in London, iſſue on the poſſeſſion of lands in Bedford ſhall be tried in that county.

(25) DEBT on a bond to perform the covenants of an indenture was brought in *London*; and iſſue joined whether the obligor was the true poſſeſſor of certain lands lying in the county of *Bedford* at the making of the indenture, or not. And by the opinion of the Court, the moſt convenient and ſure trial of this iſſue ſhall be in the county of *Bedford*, and not in *London.*

5.E 4.2. a. Dy.256.pl. 10. 267. 21. E.4. 733. 27.H.8.11. Plow. 529. Dall.Rep.14. Brn'.129. Godb. 342. [1. Term Rep. 781. 1. Cromp. Prac. 113]

(25) *Eaſt.* 3. *Car. B. R.* [Lat. 197. Godb. 385.] A leaſe was made in *London* of lands in *Middleſex*, the leſſee aſſigned, the leſſor died, the rent was in arrear; and the adminiſtrator of the leſſor brought debt in *London* againſt the aſſignee; and it was moved by STONE to amend his declaration, *i.* whereas the action was brought in *London* to bring it in *Middleſex* where the land was. And JUSTICE JONES ſaid, that where debt for rent is brought upon a leaſe for years or contract. it may be brought in any place, [Str. 776. 878. See Barnes 491.] but where it is brought on the privity of contract as here, it ought only to be brought in the place where the land is. And this has been adjudged in both courts of *B. R.* and *C. B.* And he cited *Traberon* and *Clerbrock's* Caſe. [W. Jon. 43. Win. 69. Hutt. 68. 2. Rol. Rep. 382.]

Debt for an eſcape will not lie againſt the heir of the gaoler.

2. H. 4. 15. a. 3. Keble 592. 14. E. 3. meſne 7. Plow. 457. 28 H. 8. 14. 8. H. 5. 2. 1. Keble 86. Jo. 81. 1. Saund. 218. 7. E. 6. 81 a. 3 Co. 12. a. F. Executors, 77. 74. 17. E. 2. Bre. 822. Regiſter, 141. Plow. 380. Dy. 167. 9. Co. 87. a. [3. Bac. Ab. 25. Ante, 81. Poſt. 322. a.]

* (25) DEBT was brought againſt one, as heir, for the eſcape of a priſoner permitted by the defendant's father, being in his ward and cuſtody upon a condemnation &c. And by the opinion of the Court it does not lie without a ſpecialty which charges the heir by expreſs words: and no law or ſtatute ſhall charge the heir for the tort or treſpaſs of his father: and ſuch action does not lie againſt the heir, although his father was condemned in debt on bond in his life-time, and died before execution, but the land which he had ſhall be extended by *elegit* upon *ſcire facias* brought againſt him, as terre-tenant of the land liable to execution. And ſee *Trin.* 16. *E.* 2. [490.] action of debt againſt the executors of an ordinary to whoſe hands the goods of an inteſtate had come: ſuch action was maintained. But † 11. *E.* 3. *Quære*, & 41. *Aſſ.* [15.] a like action for an eſcape againſt the executors of the warden; and by ENGLEBY it does not lie. See a like one againſt the executors of a warden for a ſimilar eſcape, [*H.* 15. *Eliz. poſt.*] fol. 322.

Morton *againſt* Hopkins.

Hil. 10. El. Rot. 950. C. B.

Rent being due to a woman, ſhe marries, the huſband gives an acquittance for rent due at a later day, this is a bar for all the arrears.

Co. Ent. 589. a. 1. And. 14. Mo. 87. [Benl. 186.] } S.C.

[Co. Lit. 373. a. note 3. Comberb. 60.]

Br. Barr. 16.

7. H. 4. 14. a. 3. Co. 65. b.

Co. Lit. 370. a. 39. H 6. F. Barr. 79.

(26) A RENT-CHARGE was granted to a woman, payable at two feaſts by equal portions, and was in arrear for many years, and afterwards the woman married; and now another day of payment came, for which day the huſband made an acquittance, ſuppoſing the receipt of the rent for the ſaid year then laſt paſt: and notwithſtanding this acquittance his ſervant diſtrained for the rent of one half-year of the firſt year that was in arrear, and as bailiff to the huſband and wife made conuſance, and this acquittance is pleaded in bar with a concluſion of, judgment whether he ought to make conuſance againſt this deed of acquittance &c. See *H.* 11. *H.* 4. [55. a. pl. 37.] for this caſe, which is denied by divers to be law, notwithſtanding the opinion there, which is, that it is an ancient poſitive law, that all the arrears are diſcharged by the acquittance of the latter term: and in

(26) It was holden for law in the Exchequer, *Trin.* 29. *Eliz.* PER CURIAM, upon good adviſement, that acceptance of the later rent is not a diſcharge of the arrears, but of homage and fealty it is otherwiſe, for theſe are concluded [by it.] The caſe was between † *Rame* and *Littleton*.

Mich.

Mich. Term, in the 10th year of the now Queen, the caſe above was argued at the Bench; and HARPER and DYER thought that the arrears are gone by the acquittance; and WELSHE and WESTON *è contra*, and chiefly becauſe all the arrears before the laſt term were due to the wife while ſole, and not to the huſband. See for the argument, *Mi* 17. *E.* 3. 20. [57. pl. 41.] in *ceſſavit*, † *E.* 4. *E.* 3. 7. & 8. *Lib. Aſſ.* [37.] & *H.* 9. *E.* 3. 9. [8. b. pl. 21.] & 29 *E.* 3. fol. 24. [34. b. 35. a.] in *ſcire facias*, and debt 1. *H.* 5. fol. 7. *obiter* by NORTON, and 5. *H.* 7. [*qu.* 33. b. pl. 1.] in annuity for † *rent* arrear. And Whether the lord is compellable to accept the arrearages, rent, or ſervice, and *è contra*, and to make acquittance and *è contra*? And FORTESCUE *de Laudibus Legum Angliæ*, fol. 11. [c. 8. fol. 14. Edit. 1741.] Every principle carries its own evidence with it, ſo that there is no diſputing with thoſe who deny firſt principles, becauſe principles do not admit of proof by reaſon, ARISTOTLE. And a wrong is more tolerable in law than an inconvenience or abſurdity. And ſee 39. *H.* 6. in bar, in *Fitzherbert* 79. which is not found in this year in the printed book.

Ceſſavit, 19. 8. E 4. 4. Aſſiſe, 353. 29. E. 3. 49. Scire Facias 152. 39. Aſſ. 59. 14. Aſſ. 11.

Litt. pl. 231.

[† Orig. *Rein.*]

After the arguments made by the Serjeants, and the arguments of the Judges of this court, judgment was given for the plaintiff, 1. That the ſaid acquittance was a bar. Bendlo. c. 68. [fol. 187. pl. 228.]

* [271. b.]

Baron and feme were outlawed, the feme came in ward, and brought a charter of pardon, ſhe ſhall be diſcharged of the impriſonment; but her pardon cannot be allowed without her huſband, 1. H. 7. 20. b. 44. E. 3. 3. b. 4. a. 1. Cro. 59. Hutt. 86. 11. H. 4, 89. b. 13. H. 4. 2 a. 40. E. 3. 2. b. 35. 1. Keble, 189. 3 H. 4. 1. 13. E. 4 15. 30. E. 3. 35. Br. Baron & Feme, 39. 13 18. E. 4. 5. 4. a. 1. 5to. E. 4. 17. a. 14. 36. H. 6. 14. 1. Stamf. Prerog. 104. 1. Sid. 20. Lit. Rep 18. 1. Term Rep. 486.]

*(27) IN DEBT againſt the huſband and wife, proceſs continued till the huſband was outlawed, and the wife waived; and afterwards there came the wife into the court in cuſtody by proceſs, and brought the Queen's pardon granted to her of the waivery: and by the opinion of the Court ſhe ſhall be diſcharged of the impriſonment of her body; but the pardon ought not to be allowed, becauſe the wife without her huſband could not ſue a *ſcire facias* againſt the plaintiff to make him declare upon the original without her huſband: and the pardon had a condition in it, *ſ. ita quòd ipſa ſtaret recta in curiâ*, which thing ſhe could not do without her huſband.

[3. Bac. Ab. 751. 2. Wilſ. 127. But ſee 1. Br. Caſ. Ch. 17. note. Barnes, 324.

(27) *Erſk.* 42. *Eliz. C. B.* Proceſs in debt againſt a huſband and wife continued until the exigent. The huſband appeared, but would not ſuffer his wife to appear; and it was ruled by the Court, that in this caſe ſhe may make attorney to prevent being waived. [4. Term Rep. 364. But ſee 2. Black. Rep. 724. Cro. Eliz. 826. pl. 6.]

TE-

IN CUR' WARD'.

(28) TENANT IN TAIL *in capite* died seised, his heir of the age of one year only; and by office the King seised the ward, and made a grant during the minority, of the land in tail, which is demesne land not usually or most commonly let, or occupied in farm for twenty years before; and the grantee made a lease of it for years &c. and the lessee assigned it over, so that now it hath been leased and occupied in farm during the space of twenty years: and at full age the heir sued out his livery, and afterwards he made a lease of this land for twenty-one years, and died within the term. Whether the heir of the lessor should be bound by this lease by the statute of 32. *H.* 8. c. 28.? And as it seems, he shall not be bound, for the lease ought to be made by one who hath estate of inheritance. And this the grantee of the ward had not here, nor the ward himself. [So] where a lease was made by the wife tenant in tail, being tenant in dower, or the husband of a woman tenant in tail, tenant by the curtesy, &c. But *quære* of a lease made by the donor of the tenant in tail within twenty years continually before.

His guardian, when the issue in tail was but one year old, leased lands never before let, or 20 years; this will not be such letting for 20 years before, as will enable the issue in tail when of age to lease under 32. H. 8. c. 28.

Magna Charta, 181. 4. Eliz. 207. a. Bas. fo. 182. b. 6. Co. 57. Bal. 176. R. 42.

[Powel on Powers, 393.]

[Co. Lit. 44. b.]

Hare *against* Butler.

(29) DEBT was brought in *London* against one as son and heir, upon a bond made by his father &c. who pleaded that he had nothing by descent at the day of the writ purchased, nor at any time since in fee simple; and the plaintiff averred assets by descent &c. in *London* in the parish and ward aforesaid, &c. and at *nisi prius* the plaintiff gave in evidence to the jury assets in *Cornwall*. Whether this be good evidence to prove the issue &c. or, Whether the jury may find that, or not, *quære* well. And see 10. *H.* 6. 24. [13. b. pl. 45.] thereof. But if it were assets of goods it seems that they may find it, because they are not so local as lands, but transitory. And see *E.* 21. *E.* 3. [56. b. pl. 7.] in replevin, issue was joined upon tender of homage in a foreign country, *s.* at *D.* the jury could not find the tender in the county where the land for which the homage was due lies, for this cannot come under their cognizance, but they may find the tender in another place within the same * county of *D.* whereof the visne was, well enough. And see *Lib. Intr.* fol. 340. that the assets were alleged certainly in *D.* and elsewhere

Debt on bond against an heir, issue joined on assets in one county: Whether the jury may find assets in another?

[21. Vin. Ab. 377. Cro. Jac. 503. 1. Com. Dig. 159.]

6. Co. 47. a. 27. 28. E. 3. 78. a. 91. b. 2. Ro Abr. 689. Pal. 366 20 H 6. 32. a. 39. H. 6. 8. b. 4. H 7. 5. b. Br. Trespass, 269. 2. E. 4. 531. a. 28. H. 8. 30. b. 22. E. 4. 9. a 21. H. 6. 10. a. Br. Attaint, 104. 9. H. 6. 63. 9. 22. E. 4. 45. 19. 2. M. B. 451. 39. Ass. 18. Enquest, 7. Went. 243.

* [272. a.]

where in the county aforeſaid, and the demandant traverſed that he had nothing by deſcent in *D.* or elſewhere in the ſaid county.

Lilley *againſt* Whitney.

A termor grants all his term and intereſt to *B. habendum* to him after his death; the whole intereſt paſſes immediately, and the *habendum* is void.

7. E. 6. B. Grant, 154. Plo. 520. b. This caſe in Harper's Rep. fol. 66. 5. Co. 11. 9. Co. 47. b. Plo. 153. 520. Dy 358. b. 1. Co. 155. a. B N.C. 437. 1. Bulſtr. 191, 192. 14 H. 8. 13. Perk. 34. 2. Ro. Ab. 66. 10. Co. 87. [Cro. Eliz. 255. Skin. 528. 1. Salk. 346. 12. Mod. 11.]

(30) A TERMOR reciting by indenture his term and leaſe, granted *all his term eſtate and intereſt* to another, *habendum* to him and his aſſigns *immediately after the death of the grantor:* Whether the grantee ſhall have this immediately, or ſhall wait for the death of the grantor, was demurred in law upon evidence, on a ſpecial verdict at *niſi prius*, before SAUNDERS and CARUS: and in this Term in *B. R.* the caſe was ruled, and adjudged, that the *habendum* was void, and the premiſes of the grant good to make the entire term paſs to the grantee immediately.

Eaſter Term,

10. Queen Elizabeth.

Hunt *againſt* Bate.

The ſervant of *A.* is arreſted, *B.* bails him, and afterwards *A.* promiſes for this friendſhip to ſave him harmleſs, this is no good conſideration for the *aſſumpſit*. *Secus*, had *A.* requeſted, and the bailing been after the promiſe.

29 E. 3. 25. b. Hob. 106. Note the report ſupra, 271. b. 1. Ro. Ab. fo. 11. Q. 2. and 3. Vide bones H. Wynd.

(31) THE ſervant of a man was arreſted, and impriſoned in the Compter in *London* for a treſpaſs; and he was let to mainprize by the manucaption of two citizens of *London* (who were well acquainted with the maſter), in conſideration that the buſineſs of the maſter ſhould not go undone. And afterwards, before judgment and condemnation, the maſter upon the ſaid friendly conſideration promiſed and undertook to one of the mainpernors to ſave him harmleſs againſt the party plaintiff from all damages and coſts if any ſhould be adjudged, as happened afterwards in

(21) *Hil.* 36. *Eliz. C. B.* † *Harris'* caſe. Action on the caſe, in conſideration that the plaintiff, at the requeſt of the defendant, had taken ſuch a one apprentice, the defendant undertook that he ſhould ſerve truly, &c. and adjudged that this is a good conſideration, although it were paſſed, becauſe it was at the requeſt of the defendant.

And *E* 38. *Eliz. C. B.* † *Foſter's* caſe., In conſideration of one hundred and ten pounds given a ſtranger at the inſtance of the defendant, the defendant undertook: and adjudged a good conſideration, although it was paſſed, becauſe it was at the inſtance of the defendant.

reality;

reality; whereupon the ſurety was compelled to pay the condemnation, *s.* thirty-one pounds, &c. And thereupon he brought an action on the caſe, and the undertaking was traverſed by the maſter, and found in *London* at *niſi prius* againſt him. And now in arreſt of judgment it was moved that the action does not lie. And by the opinion of the Court it does not lie in this matter, becauſe there is no conſideration wherefore the defendant ſhould be charged for the debt of his ſervant, unleſs the maſter had firſt promiſed to diſcharge the plaintiff before the enlargement, and mainprize made of his ſervant, for the maſter did never make * requeſt to the plaintiff for his ſervant to do ſo much, but he did it of his own head, Wherefore &c.

lib M. M. fo. 140. a. 169. b. Dy. 230. a. Bulſ. 73. 19. Eliz. 355. b 3. Bul. 187. It does not lie upon a conſideration paſt. Dr. St. 104, 105. 5. Co. 37. 9. H. 5 14. 27. H. 8. 26. B N C. 284. Note a good caſe, 11. Car. Cro. 409 3. Bulſtr. 187 Hob. 106. 4. Cro. 18. Yel. 41. [1. Com. Dig. 142 1. Bac. Ab. 173, 174. Str. 3. Burr. 1671. See Dougl. 101. note 42]

* [272. b.]

(32) But in another like action on the caſe brought upon a promiſe of twenty pounds made to the plaintiff by the defendant

A. in conſideration that *B. has* married his daughter *at his requeſt*,

(37) But *H.* 42. *Eliz. C. B. Halifax v. Barker* [Cro. Eliz. 741.], the caſe was, *B.* requeſted *H.* to pay money for him to another, and one year afterwards *B.* promiſed to *H.* to repay him, and upon this promiſe an action on the caſe was brought, and adjudged by all the Court that it does not lie, becauſe the conſideration was executed, and differed from this caſe here in 10 *Eliz.* of conſideration of marriage, for that continues

M. 41, 42. *Eliz. B. R. Rigge v. Bullingham* [Cro. Eliz. 715.], the plaintiff counted, that in conſideration he at the requeſt of the defendant had granted to him the advowſon of *Beckingham* in *Lincoln*, he afterwards undertook to pay one hundred pounds, it is a good conſideration, although it be executed, for the benefit continues.—This report is referred to pl. 32.

M. 27 and 28. *Eliz.* and adjudged 29 and 30. *El. C. B.* [Godb. 13. 2. Leon. 224. Cro. El. 42.] *Sydenham v. Worthington*, an attorney of *B.* That where *A* became bound for *B.* at the inſtance of *B. A.* was forced to pay the money, *B.* undertook to diſcharge *A.* therefrom, adjudged that the action lies, for in *aſſumpſit* it is not neceſſary that they contract at the ſame inſtant; but it ſuffices if there be inducement enough to the promiſe, and although it is precedent it is not material, otherwiſe in debt it is requiſite that the benefit come to the party, otherwiſe for want of a *quid pro quo* debt does not lie.

M. 26 and 27. *Eliz.* between † *Baxter* and *Read*, adjudged, that where *Baxter* had retained *Read* to be miller to his aunt, at ten ſhillings *per* week, debt does not lie upon this, but an action on the caſe; (*a*) for in debt it is requiſite that [the benefit] come to the party who promiſes; and ſo, for the want of a *quid pro quo* debt does not lie: but by the Court, this will ſupport an action on the caſe, for although it is not beneficial to *Baxter* it is chargeable to *Read*. [Cowp. 294.]

Action upon the caſe by † *Gilbert v. Ruddeard*, upon *aſſumpſit*; and declaration, that whereas one *Arthurius Tempeſt* was indebted to the plaintiff &c. the ſaid *Tempeſt* appointed the ſaid defendant, and delivered to the ſaid defendant fifty pounds to pay it to the plaintiff in part payment of his aforeſaid debt, whereupon the plaintiff came to the defendant and demanded the fifty pounds, and he anſwered that he had buſineſs then, and was not at leiſure, but if he would come on ſuch a day he would pay him, at which he came, and the other refuſed to pay. POPHAM. When *Tempeſt* delivered the money to the defendant to deliver to the plaintiff, there was included an agreement of the defendant to deliver it to the plaintiff, which agreement will charge him in *aſſumpſit* to him who ought to have the money, TANFIELD agreed, when there is any precedent matter which cauſed the delivery, as in our caſe by a debt, then the delivery cannot be countermanded, but here there is another conſideration beſides the debt, for he is to come to the houſe of the defendant to fetch the money. YELVERTON agreed. Wherefore it was adjudged for the plaintiff, *Eaſt. 5. Jac. B. R.*

(*a*) In the original it is, " *Car in debt eſt requiſite que vient al party que puis et iſſint* &c."

promises to pay twenty pounds, this is a good consideration]
1. Ro. Ab. fo. 11. Q. 7.
1. Cro 409.
14. 17. E. 4. b. 4. 6.
Perk. 48. 237. 4. E. 3.
8. 93.

defendant in consideration that the plaintiff, at the special instance of the said defendant, had taken to wife the cousin of the defendant, that was good cause, although the marriage was executed and past before the undertaking and promise, because the marriage ensued the request of the defendant. And

East. Jac. B. R. In an action upon the case, on *assumpsit* against one † *Storer*, an agreement was between *A.* and *B.* that *A.* should have a lease of *B.* † with divers covenants; at the day of sealing *A.* refused, on account of the insertion of a new covenant concerning repairs, whereupon the defendant, standing by, took upon himself, if *A.* would seal it, to make the repairs; and it was adjudged for the plaintiff a good consideration, although the sealing of the deed was of no consequence to the defendant, fol. 24. pl. 38.

M. 28. Eliz. † *Burton's case.* *F.* and an infant are bound to *G.* jointly and severally for the said infant, who at his full age promised to *F.* to save him harmless. *G.* sued *F.* and recovered: *F.* brought *assumpsit*, and it lies, because it was a good consideration.

Trin. 3. Car. B. R. Goodwyn v. Willouby [Poph. 177. Lat. 141. Noy. 81. Palm. 441.]. In an action on the case the plaintiff declared, that whereas the husband of the defendant was indebted upon an account stated, and promised to pay it, and died, that the wife of the defendant, having notice that the plaintiff would sue, requested him to forbear until such a time, and then [promised] to pay; upon *non assumpsit* it was found for the plaintiff.

Golsbury requests *Gale* to deliver *I. S.* six hundred pounds worth of wine: afterwards *Golsbury* promises *Gale*, in consideration that he at his request had delivered it to *I. S.* to pay him if *I. S.* did not; *I. S.* paid only three hundred pounds; and adjudged by all the Judges of *England* that an action lies by *Gale* against *Golsbury* (a).

Whitepool's case. [Cro. Eliz. 126. Ow. 94. 1. Leon. 113. Lat. 22. Poph. 192.] An infant made a contract, and at full age promised in consideration *A.* would forbear the suit, to pay; and adjudged that an action lies against him. [Cowp. 375.]

Church and *Church, East.* 1656. fol. 245. b. 265. a. (b)

† Orig. *ou*.

(a) In the original there is extreme confusion of names, as follows: "*Gale* request *Golsbury* a "deliver al *I. S.* 600l. de vine, apres *Clare* pro- "mise al *Gale* in consideration il ad son request "deliver al *I. S.* a payer *I. S.* ne payer *I. S.* pay "forsque 300l. et adjudg per touts les Justices "D'Angliter que l'action gist per *Gale* vers "*Golsbury*." This case is not reported at length in any book of reports extant, and seems to have been here copied from *Palmer*, who cites it, pag 442. (published ten years before this edition of 1682.) with, at least equal confusion, thus: "Inter *Gale* et *Clobery*; *Gale* request *Clobery* "a liver a *I. S.* 600l. worth de vine, le quel il "deliver; apres *Clare* promise al *Gale* in con- "sideration que il a son request deliver a *I. S.* "tant, a payer luy, si *I. S.* ne paya; *I. S.* paya "que 300l. et adjudge per touts Just' de Eng- "leterre, que l'action gist per *G.* vers *Cl.* en "error." Viner enters it in his Abridgment, vol. 1. page 286. thus: "*Gale* requested "*Clobery* to deliver to *I. S.* 600l. worth of wine, "which he delivered accordingly. Afterwards "*Clare* [*Gale*] promised *Gale* [*Clobery*], in con- "sideration that he at his request had delivered "so much to *I. S.* that he would pay him if "*I. S.* did not. *I. S.* paid only £ 300. and "adjudged by all the Justices of *England* that "action lies by *G.* [*Cl.*] against *Cl.* [*G.*] Palm. "442. cites it as the case of *Gale* v. *Clobery*, in "error; but it seems much misprinted, and it "should be as in the crotchets, or otherwise it "must be, that *Clare* was a fourth person, and "promised *Clobery*, in consideration of his de- "livering the wine at *Gale*'s request, and that "action lay against *Clare*." The exposition which I have adventured above, reconciles it with *Palmer* so far as to make the same parties to the suit, and the same result of law from the facts, and contains fewer alterations than that proposed by Viner, who does not notice the case as in these marginal notes to *Dyer*.

(b) This case is cited Sir Thos. Raym. 260. and ruled that *assumpsit* would lie for the funeral expences of defendant's child, buried by the plaintiff without request. So in *B. R. M.* 31. *Geo.* 3. LAW moved for a new trial, where the plaintiff had a verdict for the funeral expences of defendant's wife, who was buried, and the charges paid by the plaintiff without request, and in that case the wife lived apart from the husband, and had a large separate maintenance. But the Court refused even a rule *nisi*, for *per* BULLER, *Justice*, "at her death the separate "maintenance is at an end, and the husband "is under a moral obligation to bury her." MS.

Trin.

And land may be alſo given in frank-marriage with the couſin of the donor as well after the marriage as before, becauſe the marriage may be intended the cauſe, &c. And therefore the opinion of the Court in this caſe this Term was, that the plaintiff ſhould recover upon the verdict, &c. And ſo note the diverſity between the aforeſaid caſes (c).

4. Mar. 147. b. 4. E. 3. Tit. 6.

Trin. 39. *Eliz.* *Marſh v. Rainſford.* [2. Leon. 111. Cro. Eliz. 59.] There was a communication of marriage between *M.* and the daughter of *R.* and of two hundred pounds to be given with the daughter, but they could not agree on the day of payment. *Marſh* ſtole away the daughter, and married her without the knowledge or conſent of the father; but afterwards *R.* agreed, and promiſed that in conſideration he had married his daughter he would give him two hundred pounds, and afterwards *M.* brought *aſſumpſit*, and recovered by judgment.

H. 2. *Jac B. R. Rot.* 511. † *Sandhill v Jenny.* The plaintiff declared, that in conſideration that the plaintiff had formerly married his daughter at his eſpecial requeſt, the defendant promiſed the plaintiff to pay him every year during the life of the defendant ten pounds, &c. The plaintiff, upon *non aſſumpſit* pleaded, had judgment, but upon a writ of error in the exchequer chamber the judgment was reverſed, becauſe the marriage was executed before the promiſe made, yet the declaration ſuppoſes that the defendant requeſted the plaintiff to the marriage.

(c) By 29. *Car.* 2. c. 3. where a man undertakes to anſwer for the debt, default, or miſcarriage of another, no verbal promiſe ſhall be ſufficient to ground an action, but ſome note or memorandum of it ſhall be made in writing, and ſigned by the party to be charged with it. See 2. Wilſ. 94. 308. Cowp. 227. 460. 2. Term Rep. 81. 1. Hen. Bl. 120.

Lord Abergavenny *againſt* Plummer and others.

KENT.

In waſte by pulling up a copper fixed to the foil by the leſſee, plea a deviſe thereof by the leſſee, iſſue on the deviſe is a jeofail.

Plaintiff may abridge the waſte aſſigned, not falſifying the writ: but if in waſte *in domibus et boſcis* he abridge all the waſte *in domibus*, the writ ſhall abate.

If one of ſeveral iſſues be a jeofail, the others ſhall be tried by the ſame jury, but there ſhall be a new *venire* to try the new iſſue.

(33) WASTE was aſſigned amongſt divers other things in the pulling down of a copper or lead affixed to the ſoil by a termor: to which was pleaded in bar a legacy of it by the termor, and that by the aſſent of the executors it was pulled down, and removed. And the plaintiff traverſed the deviſe of the termor, upon which they were at iſſue, and upon other points there were joined divers other iſſues. And now the Jury appeared, and this iſſue on the deviſe was aſſerted to be a *jeofaile*, and ſo holden by the Court. And yet on the other iſſues the opinion of the Court was, that the Jury ſhould be taken, and ſhould be diſcharged of the iſſue, which was a *jeofaile*; and a new

(33) NOY, *Attorney General*, in *Mr. Atkins'* reading was of opinion, that the 15. *E.* 3. [Fitz. Abr.] tit. Waſte, 8. [108] that in waſte of the hall the whole houſe ſhall be recovered was good law, againſt the opinion of COKE Inſt. fol. 54. a. 15. *H.* 7 11. And he cited † *Lord Abergavenny* and *Sir Richard Southwell's* caſe, in an action of waſte, for waſte done in the kitchen and larder of a caſtle, and the whole caſtle was recovered, for a caſtle cannot be divided. [5. Com. Dig. 682] So adjudged 11 *El.* See alſo 34 *Eliz.* *Allen* and *Hay's* caſe [cited Lat. 62] Tenant of a houſe is diſſeiſor of another houſe adjoining to it, and he deſtroyed both, and made it into one new one, the diſſeiſee recovered the whole houſe. See *Eaſt.* 1. *Car. B. R.* [Lat. 61.] *Hemms* and *Stramier's* caſe, fo. 10. and 11. &c. for the *quære* in this caſe.

venire

[5. Bac. Ab. 462. See 1. Hen. Bl. 259. note.] [1. Com. Dig. 84.] 2. H. 7. 28. 27. 42. E. 3 6. Br. Waſt. 104. 20. H. 7. 13. b. 4. Co. 63. Dy. 254. 12. H. 4. 4. 2. 6. 21. E. 4. 10. 10. 24. 39. H. 6. 43. a. 8. 14. 19. 33. H. 6. 13. a. 4. 13. 4. a. 4. E. 4. 33. 40. E. 3. 5. b. 44. E. 3. 34. b. 36. H. 6. Pleint. 7. 9. H. 6. 37. Repleder, 9. 14. E. 3. Waſt. 27. Dy. 230.

venire facias ſhould iſſue upon the new iſſue. And it was alſo holden that the plaintiff might abridge the waſte aſſigned in the pulling down of the copper, ſo as he do not falſify his writ by this abridgement: for if the writ be in houſes, and woods, and he abridge all the waſte ſuppoſed in the houſes, his writ ſhall abate for that. *Quære* well if the plaintiff upon this plea by which the waſte was confeſſed, ſhall not have judgment to recover &c.

Cardinal *againſt* Sackford, Maſter of the Requeſts.

Essex.

The leſſor covenants and grants to his tenant, that he ſhall hold the land to him and his wife during the life of the leſſor. This is neither a ſurrender nor confirmation, but a covenant only.

[2. Com. Dig. 559.] 14. H. 8. 19. a. 5. Co. 11. Dy. 151. 269. 252. pl. 91. 1. Cro. 207. Bro. Leaſes, 60.

(34) IN evidence in replevin the iſſue was joined upon a ſurrender made by the leſſee for years to the leſſor, it appeared by an indenture that the leſſor had only an eſtate tail in the land, the reverſion to the Queen in fee. And the leſſor covenanted and granted to the leſſee that he ſhould have and hold the land to him and his preſent wife, and to any other wife whom he ſhould chance to marry, during the life of the leſſor, without paying him any rent, &c. but no livery of ſeiſin was made upon this indenture; and Whether this ſhould enure as a ſurrender of the term, or as a confirmation to the leſſee to enlarge his eſtate for the term of the life of the leſſor, was doubted. And by the opinion of three Juſtices, it ſhall do neither one nor the other, but is only a covenant, notwithſtanding * this word *grant*; but WESTON thought the contrary, becauſe of this word *grant*. The ſame caſe *poſt*, *Eaſt.* 11. *Rot.* 21.

* [273. a.] 23. El. 374 b.

Walrond *againſt* Pollard.

The deanery of *Wells* is a ſpiritual and not a temporal promotion, nor is it a donative, therefore leaſes made by the

(35) THE deanery of the cathedral church of *Wells* was diſſolved by the ſurrender of *Fitzwilliams* in the time of *Henry* 8. And the prebend of *Currey* in the ſame church

(35) The king may make a mere layman a dean, for his function is temporal; by the Judges, *H.* 20. *Jac. B. R.* [Yelv. 60. 1. Brow. 201.] in the argument of a caſe, *Fairfield v. Gayre.* But WILLIAMS in the argument of the ſame caſe ſaid, that knights have deaneries, but this is by ſpecial diſpenſation of the archbiſhop, and that he had ſeen ſuch licenſes (*a*).

(*a*) But by 13. and 14. *Car.* 2. c. 4. §. 14. no perſon whatſoever is capable to be admitted to any parſonage, vicarage, benefice, or other eccleſiaſtical promotion, or dignity whatſoever, before ſuch time as he ſhall be ordained prieſt, &c. And ſee Watſ. Cler. L. 141, 142.

Hil.

church was alſo ſurrendered by *Goodman*, Prebendary there, in the 1ſt year of *E.* 6. And in that year the diſſolution of the deanery was confirmed, and the deanery extinguiſhed, by act of parliament, and a new deanery erected and created, to which new deanery the lands and poſſeſſions of the ſaid prebend of *C.* were annexed amongſt other poſſeſſions. And the nomination and appointment of the perſon of the new dean and of his ſucceſſors, given by the act to the King and to his heirs and ſucceſſors by letters patent, and that he ſhould have the like authority in the choir and chapter in every thing as the old dean had, ſaving to all ſtrangers (other than the Biſhop of *Bath* and *Wells*, and his ſucceſſors, and the ſucceſſors of the ancient deanery, and of the prebend of *Currey* &c.) all rights, titles, intereſts, &c. And afterwards King *Edw.* 6. reciting the ſaid act, by his letters patent (the direction of which was, *Rex omnibus ad quos &c.*) appointed *Goodman* dean for the term of his life, whereupon he was inſtalled and ſeiſed thereof, and being ſo ſeiſed he took the prebend of *Wyveliſcome* in the ſame church. After which the Biſhop there, by virtue of the King's letters patent of viſitation of the dean and chapter there, by one *Mericke* his commiſſary, declared a ſentence of deprivation againſt *Goodman* of the deanery by default, by reaſon of the two dignities or promotions taken *ſimul et ſemel* in one and the ſame cathedral church; the firſt of which, by the canon in the eccleſiaſtical law, was void: from which ſentence he appealed to the Archbiſhop of *Canterbury*, who affirmed the ſentence of deprivation; and from which ſentence he appealed over to the King, &c. (36) After which King *Edw.* 6. in his fifth year, reciting the ſaid cauſe of deprivation of *Goodman*, by his letters, the direction of which were, *Rex reverendo in Chriſto patri &c. epiſcopo de Bathe et Wells, &c.* gave and granted the deanery and alſo the prebend of *Currey* and all their poſſeſſions to *Turner* now dean there, for the term of his life, whereupon he was inſtalled &c. and was ſeiſed &c. And afterwards the King died, and *Mary* the

dean need not the confirmation of the king, nor even of the biſhop, the act of parliament that erected the new deanery on the ſurrender of the old one, and gave the nomination of the dean to the king, enacting alſo, '*that the new dean and his ſucceſſors might grant, demiſe, or depart with their poſſeſſions in the ſame manner as the ancient deans could*, whoſe leaſes only required the confirmation of their chapter. The lands and poſſeſſions of the prebend of *C.* were annexed by the act to the deanery, but not the prebend itſelf, Whether in that caſe the dean taking another prebend in the ſame cathedral may be deprived as having two promotions; and Whether the deanery is thereby vacated *ipſo facto*, or only voidable by ſentence, *qu.*

[Ante, 239. S. C.]
[2. Term Rep. 532.]
[See Lord Treby's argument in the Quo Warranto caſe, 10, 11. and the poſtſcript throughout. And a proteſt on the 23. Jan. 1689. in the Lords Journals, vol. 14. p. 424.]
[Watſ. Cler. L. 8.]

3. Co. 75. b. Dy. 209. 258. 294. a. 8. Co. 75. Plow. 498. 2. Keble, 167. 2. Ro. Rep. 103. Br. Depoſition, 10. Davis Rep. 46. b. 11. Co. 99. Dy. 159, 264. 5. E. 3. 9.

Hil. 11. *E.* 3. *Rot.* 21. at *York.* The biſhop of *Durham* preſented *Stephen Manby* to the prebend of *Weſtmerington*, being a prebend of the church of *St. Andrew*, and afterwards † *the deanery becoming void* in the ſaid church, the aforeſaid biſhop preſented him *Stephen* to the ſaid deanery, and for that it is not lawful for any one to poſſeſs two prebends in one collegiate church, judgment is given that the lord the king recover the preſentation to the church of *Weſtmerington*. Refer this caſe to the title of the king to preſent by ceſſion to the caſe above, 228. b.

† Orig. *ante decanalis.*

Queen,

Queen, at the ſuit of *Goodman*, in the firſt year of her reign, iſſued a commiſſion to four delegates, who by ſentence reſtored *Goodman* to the deanery, reverſing the other two ſentences, wherefore he was reſtored, and made divers leaſes confirmed by the Biſhop and Chapter there. And afterwards the Queen *Mary* died; after whoſe death, *s.* in the time of the preſent Queen *Elizabeth*, * *Turner* (by a petition and ſupplication made to the Queen, who aſſigned certain commiſſioners delegates), was reſtored by ſentence, which ſentence afterwards was by other commiſſioners affirmed notwithſtanding the reclaimer, and appeal of *Goodman*. And afterwards *Goodman*, being removed, died. And then *Turner* had ouſted divers of *Goodman*'s leſſees, and of the lands had made new leaſes, between which leſſees there have been divers ſuits and contentions; and one iſſue joined in *Michaelmas* laſt, whether *Goodman* was dean at the time of the making of the demiſes &c. or not, for the trial of which the Jury of the county of *Somerſet* now appeared at bar in the Bench. (37) And upon evidence given divers queſtions were moved. 1ſt, Whether the deanery was a mere temporal promotion, and office or function, or ſpiritual in this caſe. And by the opinion of ALL THE JUSTICES there, it is ſpiritual and not temporal, and ſo it was taken to be by the parties themſelves before this time, as appears by the ſaid diſcourſe of the appeals above. Alſo Whether *Goodman* was juſtly deprived by *Mericke* for the cauſe above, becauſe the prebend of *Carrey* was not extinct, and only the poſſeſſions thereof, and not the prebend itſelf was annexed to the deanery by the act; therefore *quære* of this. And Whether the deanery was *ipſo facto* void without any ſentence pronounced, or not? And of this the Juſtices were of different opinions, therefore *quære*. But the Jury gave a verdict for *Goodman*'s leſſees, *s.* that *Goodman* was dean at the time of the demiſes. (38) And note alſo that it was moved, that the dean was viſitable by the Biſhop there of mere right, notwithſtanding the ſaving in the act; for that extends only to the intereſt and right of patronage in the deanery, and appoints that to the King &c. *quære inde*. Alſo it was holden by ſome that there ought to have been a confirmation from the King, as patron of all leaſes made by the dean; *quære* this. Note well the words of the act &c. But in *Hil.* 15. of the preſent Queen, this point was ruled by the opinion of all the four Judges,

* [273. b.]

Dy. 123. 239. 280. a. 282. 35. H. 6. 35.

2. R. 2 Qua. Imp. 143.

9. H. 6. 32.
Davis, 24.
2. Co. 48.
B. N. C. 58. 463.
Dy. 63.

2. Ro. Ab. 341, &c. 714.

[Gibſ. Codex, 172.]

Dy. 293, 294. 4. Co. 79. Inſt. 196. 2. Davis, 3.

11. Co. 99. b.

[1. Term Rep. 651.]
2. Ro. Ab. 229.
Co. Lit. 344. a.
3. Co. 75. 4. Co. 75.
Sty. 181.
1. Ro. Ab. 478. 80. i.
1. Inſt. 300. b.
1. Ro. Ab. 480.

Judges, that there is no need to have the confirmation of the King, as ought to be of a promotion donative. For the words of the act are, *that the deans may grant, demise, and depart with their possessions in the same manner and form as the ancient deans might, and used to do*, which never was to have the confirmation of the bishop, but only of the chapter. And this case was between *Walrond* and *Pollard*. And of this opinion were CATLYN and WRAY in the Queen's Bench, *Trin.* 15th of the now Queen, upon evidence to a Jury charged there; but SOUTHCOT hesitated.

[Wats. Clerg. L. 478.]

Dy. 40. b. pl. 1.

Note, by POPHAM, *Chief Justice*, in the case of the hospital of *Norwich*, 35. *Eliz.* that it was resolved, that by the grant of all the possessions of a dean and chapter their corporation is determined, inasmuch as they ought to have a place for their assembling, for otherwise they shall be taken rather to resemble an illegal assembly than a corporation; and so was the law agreed by the Justices of the Queen's Bench, at *Serjeants Inn*, 35. *Eliz.* the hospital of *Norwich*'s case, that an hospital also shall be dissolved by a grant of all their possessions. [But see 3. Rep. 73 &c. and 2. And. 165. the dean and chapter of *Norwich*'s case ruled *contra*, that this is no dissolution.]

Grey's Case.

* [274. a.]

(39) *R. G.* before the statute 27. *H.* 1. [c. 10.] was seised in use of certain lands to him, and to the heirs of his body, remainder to *H. G.* his brother, and to the heirs of his body &c. And before the said statute a common recovery was suffered by *R. G.* who vouched the common vouchee. Which recovery is executed; and afterwards the recoverors enfeoffed one *T. H.* to the use of the said *T. H.* And afterwards *R. G.* died without issue. Whether the ancient feoffees might enter or have an action to recover the land to the first use, or not? And CATLYN, DYER, WESTON, GERRARD and ONSLOWE, *Attorney* and *Solicitor General*, thought that they might.

Cestuy que use in tail before the statute suffers a common recovery, and dies; the ancient feoffees may enter, or have an action to revive the use for the remainders.

B.N.C. 147. 27. H. 8. 20. 30. H. 8. Br. Feoffment al Use, 56. 21. Plo. Manxell's Case, 5. b. Plow. 353. Dy. 58. 60. 330. pl. 17. 29. H. 8. 13. b.

[Br. Entre Congeable, 123. contra. See Gilb. Uses, 32.]

(40) Also there are two brothers, and the youngest hath issue a son, and is attainted of treason, and executed; and afterwards the elder brother (having good cause to have a petition of right to certain lands being in the hands of the King before the attainder) died without issue, and the son of the youngest brother is his next heir in blood, who by the said attainder of his father is disabled to take the said title, and right of action as heir to his said uncle. Whether the right be now extinct, and the cause of the petition clearly determined, or not? And it seems that it is, so long as the attainder

A. hath cause of petition to the King for lands, his brother *B.* hath issue a son, and is executed for treason. *A.* dies without issue; and *B.*'s son is restored by parliament in blood only as to his father, but with leave to sue for lands of collateral ancestors, as if there had been no attainder, provided that it extend not to lands in the King's hands by at-

tainder; he may have a petition of right for thoſe lands as his uncle might.

[2. Hawk. P. C. 648. 1. H. H P. C. 256.]

Jo. 460. 6. Co. 40. 15. Car. Cro. 543. 22. H. 6. 38. 46. E. 3. Deſcent. 6. 32. H. 8. 48. a. 49. E. 3. 12. b. 1. E. 3. 4. 31. E. 1. Deſcent, 17. 49. Aſſ. 4. 4. Co. 40. b. Dr. Stu. 17.

tainder ſhall remain in force. (41) *Item*, After all this the ſon is reſtored by Parliament in blood as heir to his father by theſe words enſuing, *s.* "*that he and his heirs ſhall be* "*from henceforth enabled only in blood as ſon and heir and* "*heirs to the ſaid father, and made only heir and heirs in* "*blood to the ſaid father. And that alſo the ſaid ſon and his* "*heirs ſhall be from henceforth enabled to demand, aſk, have,* "*hold and enjoy all ſuch lands, tenements &c. which at any* "*time hereafter ſhall deſcend, come, remain, or revert from any* "*collateral anceſtor of his ſaid father as if the attainder had* "*not been had. And that the ſaid ſon and his heirs may here-* "*after uſe, and have any action or ſuit, and make his pedigree* "*and conveyance in blood as heir, as well to and from his ſaid* "*father, as alſo to any other perſon or perſons, in like manner* "*and form as if his ſaid father had not been attainted, ſaving* "*to all and every perſons, bodies politic and corporate, their* "*heirs and ſucceſſors, all ſuch eſtate, poſſeſſion, right, rever-* "*ſion and remainder, as they or any of them have, or ought* "*to have, in and to the premiſes, or any parcel thereof, as* "*though the ſaid act had never been made.*" Whether by the ſaid act the ſon is reſtored to the ſaid right and title of petition which was in his uncle, as heir to him, or not? Note that there was a proviſo before the ſaving, that this act of reſtitution ſhould not extend to any lands which were in the hands of the King, or of any other by reaſon of the attainder. And it ſeems by theſe clauſes, that the intent of the King and Parliament was liberal to the party who was reſtored, ſo that he ſhould be enabled to have the petition of right above, as heir to his uncle. And clearly there is great equity and * conſcience in the caſe for the ſaid *Grey*, who had never offended the King, or any of his anceſtors, but was only a feoffee in truſt, &c. And ſo it was reſolved, that the report of the opinion of the ſaid five perſons ſhould be made to the Queen in next *Michaelmas* Term.

1. Kebs 219. 265. 606.

* [274. b.]

Mutton's Caſe.

A. levies a fine to the uſe of himſelf and ſuch wife *as he ſhould marry*,

(42) JOHN *M.* ſeiſed of certain land in his demeſne as of fee, levied a fine thereof to certain perſons, and to

(42) † *Read's Caſe tempore Eliz. C B.* A huſband made a feoffment in fee to the uſe of himſelf and his wife which ſhould be in fee; he married and levied a fine of the whole, and died: and ſhe brought a *cui in vitâ* for a moiety. [See Co. Lit. 188. a. poſt. 340. Cro. Eliz. 826.]

the

the heirs of one of them: and the uſe and intent of this fine is declared by certain indentures to be to the uſe of the ſaid *J. M.* and of ſuch wife and wives *as the ſaid J. M. ſhould happen afterwards to marry*, by whatever names ſhe or they might be called, for and during their natural lives, and the life of the ſurvivor of them, with divers remainders over. And afterwards the ſaid *J. M.* took to wife one *A.* and then died. Whether ſhe ſhall take any thing by the ſaid indentures and fine, or not, *quære.* And by the opinion of *Wray* and *Mead*, Serjeants, and *Plowden*, and *Onſlowe* Solicitor, ſhe may, and thereto they ſubſcribed their names. The ſtatute of Uſes 27. *H.* 8. [c. 10.] is, that where any perſon ſhall be ſeiſed to the uſe, confidence, or truſt, of any other, the ſame *ceſtuy a que* uſe, confidence, or truſt, ſhall be ſeiſed and poſſeſſed to all intents, conſtructions, and purpoſes of and in ſuch like eſtate as he had in uſe &c. and the eſtate, title, and poſſeſſion of the perſon ſeiſed to the uſe &c. deemed in the *ceſtuy a que uſe*, &c. after ſuch quality, manner, form, and condition, as he had in the uſe, confidence, or truſt &c. (43) *Quære*, In whom the uſe ſhall be until the marriage, and what eſtate ſhall be in uſe. And, Whether the name of wife, without any other name, ſuffices for capacity to take a jointure with the huſband, or by way of remainder after his deceaſe, and what relation that ſhall have, *s.* to the time of the feoffment or of the marriage, ſee 12. *H.* 7. fol. 27. in Treſpaſs, Feoffment to the Uſe of the Pariſhioners of *D.* not incorporated. Alſo in the time of † *Ed.* 1. feoffment to a man, and to that perſon who ſhall be his firſt wife, is not a good jointure. And 18. *E.* 3. [59. b. pl. 91.] Intruſion. A demiſe to a man, *habendum* to him and the firſt ſon of his begetting, is not good joint-tenancy, nor by way of remainder &c. becauſe they were not *in rerum naturâ* at the time of the feoffment. Alſo afterwards 5. *E.* 4. fol. 4. [7. b. pl. 17.] the brother's poſſeſſion of an uſe makes the ſiſter heir. The caſe above was argued *Michaelmas* 13 & 14. of the preſent Queen by *Geffray* and *Meade*. See a like caſe *H.* 17. [fol. 339. b. pl. 48.] *poſtea.*

and then marries; his wife takes an eſtate in joint-tenancy with him. [See 22. Vin. 201, 202. *in notis.*]

Mo. 96. 2. Leon 223. [Dal. 91. & Vide 1. And. 42.] } S.C.

4. E. 4 21. Bundel. Ful. Parl. fol 9 1. Co. 130. Dy. 191. 300.

See 1. Co. 101. a.

[Co. Lit. 188. a.]

Raſt. Uſes, 9.

[Mo. 517. S. C. that it is ſettled to be in the huſband till marriage.] 6. Co. 18. a. 17. a. Vide F Tayle, 24. Br Treſpaſs. 289. Feoffment al Uſes, 29. 30. E. 3. Feoffments, 64. 17. E. 3. 59. 13. H. 7. 9. 7 E. 4. 12. pl. 11. b. 7. E. 3. 29. 18. E. 3. 53. 5. E. 4. 7. 1. Aſſ. 11. 1. Coke. 100. b. 7. E. 3. Tayle, 8. 39. Aſſ. 20. Plow. 58. 29. 3. Eliz. 190. b. 5. H. 4. 3. a. 33. Aſſ 47. 17. El. 340. b. Coke, 2. 51. b. 3. Co. 2. 4. Co. 22. Feoffments 60. Defendant, 11. a.

Sir John Bourne, Knight, *againſt* Ruſſel, Knight.

A *certiorari* lies from *B. R.* to *C. B.* to remove the record itſelf of a fine for the purpoſe of cancelling it for errors. But to remove a record of *niſi prius* on which attaint is brought, there muſt be a *certiorari de tenore recordi* out of Chancery, and it muſt be ſent into *B. R.* by *mittimus*.
[4. Vin. Ab. 341.]
5. Co. 38. F. Nat. 20. 1. H. 7. 10. 16. E. 3. Record, 35. Br. Record, 40. 21. E. 3. 24. a. 21. Aſſ. 10. 40. Aſſ. 29. 15. E. 4. 21.
[Cruiſe, Fines, 296. 6. Mod. 178. But ſee Gilb. Executions, 168.]

[* 275. a.]

[1. St. Tr. 677, 678.]
44. E. 3. 37. a. 41. Aſſ. 29. Dy. 89. Dyer, 250.

9. H. 6. 4.

B. N. C. 278. Dier. 133. 284. b.
[2. Com. Dig. 19.]

(44) NOTE, That in this Term two writs of *certiorari* were awarded out of the Queen's Bench, the one directed to *Lennard* the *Cuſtos Brevium*, which was to remove the foot and concord of a fine levied in the time of the King and Queen *Philip and Mary* (whereof in law and in truth nothing but the tranſcript was removed before by writ of error, and error found and adjudged in that) to the intent that the record of the fine ſhould be removed from the files in the Common Bench, and cancelled in the Queen's Bench, and there are precedents in the Books of it. And *Egerton*, clerk of the office of Chirographer, ſhewed a precedent in the time of *Ed.* 3. of a *certiorari* out of the Chancery, directed to the Juſtices of the Common Bench, and for the tenor of the foot of a fine for error, and by *mittimus* ſent over into the King's Bench in the 16th year of *Ed.* 3. PARN' being Chancellor. And the other writ was directed * to the Chief Juſtice of the Bench to remove the record whereof a verdict paſſed at *niſi prius*. And now attaint was brought in *B. R.* upon this verdict. (45) And that writ was not allowed, for no precedent could be found of ſuch a writ; for the note or entry of the clerk of the treaſury in the Bench does not ſay, that the record aforeſaid is removed into the Queen's Bench "by virtue of a writ of *certiorari*," but only "by virtue of a writ for correcting errors under the "great ſeal of *England*." Wherefore the party, who was *Sir John Bourne*, Knight, againſt *Ruſſel*, Knight, purchaſed a new writ of *certiorari* out of the Chancery for the tenor of the record only, which was certified to the Chancery accordingly, and thence ſent into *B. R.* by *mittimus*.

The marſhal, by leave of the Chief Juſtice and aſſent of the plaintiff, permitted one in execution to go at large for a time; when he returns he is in execution again, ſo that if he again permit him to quit the priſon, he is liable for an eſcape.
This caſe is not law by common practice.

(46) A MAN was condemned in the Exchequer at *Weſtminſter* upon a *quo minus &c.* in one hundred pounds, on a recognizance in the ſame court, and for the debt he was committed to the *Fleet* in execution, and afterwards he was removed into *B. R.* by a *corpus cum cauſâ*, and there was committed to the cuſtody of the marſhal for the ſaid cauſe and execution. And afterwards in the pariſh of *Saint Swithin* in *Walbrook*, *London*, the marſhal ſuffered him

him to go at large: whereupon the plaintiff brought an action of debt againſt the marſhal in *London* in *B. R.* by bill, and counted the whole caſe as above, and concluded, wherefore an action accrued to him by the form of the ſtatute in that caſe made and provided. *Quære* what ſtatute this is, *s.* 1. *R.* 2. [c. 12.] or *Weſt.* 2. [c. 11.] *de ſervientibus et ballivis &c.* (47) And the defendant juſtified the enlargement of the priſoner by leave of the *Chief Juſtice*, W. GASCOIGNE, and by the aſſent of the plaintiff himſelf, judgment *ſi actio &c.* To which the plaintiff ſaid, that he at the inſtance of the ſaid *Chief Juſtice*, had agreed to the enlargement of the priſoner for certain days, ſo as that it ſhould not prejudice his execution &c. at which day the priſoner returned and rendered himſelf back to the priſon, where he remained until the defendant afterwards, *s.* at the time aforeſaid, ſuffered him to go at large, without this, that he agreed to the enlargement of him as the defendant had pleaded: and the defendant *è contra*; and the iſſue was found for the plaintiff; and after divers continuances by a *Curia adviſare vult*, at length the plaintiff had judgment to recover the debt againſt the marſhal, and damages &c.—But *non conſtat* whether the priſoner went at large with a keeper or not. And a ſimilar caſe againſt the deputy of the marſhal for an eſcape, *M.* 16. *H.* 6. Rot. 63. but there is no mention in the count of, by force of the ſtatute &c. See a like caſe for the letting a burgeſs of parliament go at large, by a writ of privilege of parliament, who was in execution, *E.* 34. & 35. *H.* 8. Rot. 23. [Ante, 59. b. 60. pl. 17.]

N. B. 130. b. 31. 21. E. 4. 8. 67. 14. H. 7. 11. 13. H. 7. 2. 10. H. 7. 25. 6. H. 7. 13. 2. E. 4. 6. 10. E. 4. 10. Br. Eſcape, 45. 49. 41. Aſſ. 15. Dier, 152. 278. b. 14. E. 4. 3. a. 15. E. 4. 18. Plow. 38. a. 35. b. Co. 12. Raſt. Debt. 4 ca. 11. Raſ. Account, 2. Dy. 60. 11. H 7 3. a. 3. Co. 52. b. 14. H. 6. 8. 27. H. 8. 24. [Bro. Eſcape, 1. Gouldſb. 81. Stil. 117. 3. Com. Dig. 182. 184. 185. 1. Salk. 271 pl. 1. See 8. & 9. W. 3 c. 27. 2. Bl. Rep. 1048. 2. Term Rep. 126. 2. Hen. Black. 108.]

[2. Lev. 109. 6. Mod. 183.]

Dy. 140. B. N. C. 12.

An action lies on 10. & 11. El. c. 5.

Dy. 298. 297. Trin 37. H. 8. 17. 36. H. 8. 65.

Vide Crompt. Juriſd' de Court, Parl. 5. M. 162.

(47) 30. *Eliz. C B.* & 34. *El. B. R.* clearly it is a good diſcharge by parol of the party himſelf without any writing. Plow. 36. So 1. *Car. B. R* it was agreed in the caſe of one † *Smith*; but there it is ſaid, that if the ſheriff had permitted an eſcape, he could not diſcharge the ſheriff by parol.

* Forman *againſt* Mounſon and another. [* 275. b.]

1) AN action of falſe impriſonment was brought by *George Forman*, one of the attornies of the Bench, againſt *Mounſon* and *Mounſon*, two juſtices of the peace as

An indictment without conviction or outlawry is not ſufficient to ſubject one who ſtrikes in

(48) There ought to be a ſentence of it in the ſpiritual court, and that ought to be certified under the ſeal of the ordinary, otherwiſe it is no plea, as was ruled between *Sinham* and *Trundle* of *Maidſtone* in *Suſſex* in *B. R. H.* 45. *Eliz.* [Cro. Eliz. 919.] And there it is ſaid, that there ſhould be a ſentence declaratory, or a conviction, for otherwiſe there are no means for his abſolution. 6. Co. 29. *Green's* Caſe. A church is void for not reading the Articles by 13. *Eliz.* [without] the ſentence declaratory, which ſtat. 13 is, that he ſhall be deprived *ipſo fuſto*

a church-yard to the corporal puniſhment directed by 5. & 6. E. 6. c. 4. And whether without ſentence he ſtand *ipſo facto* excommunicated, *qu.* [Vin. Striking (A.)]

7. H. 4. 17.

well for the county as the city of *Lincoln*, and commiſſioners there in eccleſiaſtical cauſes &c. who pleaded an excommunication of the plaintiff now, and at the day of ſuing forth the writ, *s.* on the 16th of laſt *January*, for that the plaintiff in *July* laſt paſt maliciouſly drew his dagger upon one *E.* with intent to ſtrike him, as well in the church-yard of *Saint Margaretta* the Virgin, within the cloſe of the cathedral church of *Lincoln*, as in the burying-ground of the ſaid church *&c.* for which offence he was indicted before the mayor and other juſtices of the peace in the ſaid city of *Lincoln* &c. on the 17th day of laſt *January*, (which was the day after the writ purchaſed &c.) according to the ſtatute in that caſe provided &c. And Whether this was a good plea in diſability of the perſon of the plaintiff, was well debated at the Bench, becauſe he is not yet convicted of the offence: for this indictment alone without anſwer made to it, or proceſs of outlawry completed &c. is not any conviction in law, *s.* to have the corporal puniſhment provided by the ſtatute of 5. *E.* 6. c. 4. which was agreed to by the whole Court. But Whether the plaintiff, by the offence committed, immediately without any proof made, or trial had by force of the ſaid act of parliament, and without any ſentence given, or proof of witneſſes made before the ordinary, by theſe words *ipſo facto* ſhall be deemed excommunicated, was much doubted by reaſon of the words of the laſt clauſe of the ſtatute which follow, *s. and beſides that he ſhall be excommunicated ipſo facto as is aforeſaid*, *s.* for ſmiting or laying violent hands upon any perſon, which is the ſecond clauſe in the act. And the Court would adviſe until next Term; but *Forman* died in the mean time.

Dy. 214. 346 pl. 7. 1. Ro. Ab. 90, 1. Ro. Rep. 70. Raſ. Fighting and Quarrelling, 179. 3. Cro. 680.

[See Caſ. Temp. Hard. 191. 1. Hawk P. C. 272. and the caſe in the margin there.]

Lord Dacres' Caſe.

A. conveyed part of his eſtate to friends for years, they paying one hundred pounds annually to himſelf and his wife during the term; and then died inteſtate, his heir within age, and in ward to the Queen; ſhe ſhall not have the one hundred pounds, for it is not rent to go

(49) THOMAS the late *Lord Dacres* being ſeiſed in fee of certain lands &c. and alſo poſſeſſed of divers implements and chattels, by indenture dated a little before his death, did demiſe, grant, and to farm let to three of his friends all the premiſes for the term of ſixteen years, his ſon and heir being then of the age of five years. By which demiſe and leaſe, the ſaid leſſees covenant and grant to and with the ſaid *Lord Dacres*, that they, or one of them, their executors,

executors and aſſigns, *ſhall well and truly content or pay, or cauſe to be well and truly contented and paid* to the ſaid *Lord Dacres* and *Lady Elizabeth* his wife, their heirs and aſſigns, during the ſaid term, the ſum of one hundred pounds at the uſual feaſts in the year, *s.* &c. by equal portions; and alſo ſhould pay or cauſe to be paid to *Anne Dacres*, daughter of the ſaid *Lord Dacres*, the ſum of two thouſand marks at certain days for her advancement in marriage &c. And he alſo made to others, like leaſes of other his lands, for * other two of his daughters, and like covenants and grants of an annual ſum as is aforeſaid. And afterwards he died inteſtate, leaving one full third part to his heir being now in ward to the Queen, and of the age of ſeven years. And three hundred and ſeventeen pounds more is accrued in the mean time by the death of the ſaid *Lady Elizabeth*, who was married to the Duke of *Norfolk*, and about *Lent* laſt paſt died, far gone with child. (50) Whether the Queen during the minority ſhall have the ſaid annual ſum of one hundred pounds, or not? And it was reſolved by ALL THE COUNSEL of the Court of Wards aſſembled for that purpoſe, that the Queen ſhould not have it, becauſe it was not a rent reſerved, but a ſum in groſs, and due to the executors or adminiſtrators of the ſaid *Lord Dacres* and of *Lady Elizabeth*, who now is the Duke of *Norfolk*, and he hath the intereſts of the leaſes in his hands, and hath the profits for the finding of the children of the ſaid Lord and Lady, being three daughters and one ſon, for whoſe uſe and maintenance the intent of the ſaid *Lord Dacres* was [that it ſhould be.] And therefore no covin can be averred by the Queen by the ſtatute of 34. & 35. *H.* 8. [c. 5.] where a full third part remains undiſpoſed of to the ward, which is the true meaning of both ſtatutes taken together.

to the heir, but a groſs ſum, and belongs to the wife, or her executor: and having left more than one third part of his eſtate to deſcend, the Queen cannot charge colluſion.

[Crompt J.C.114.8.C.]

[Co.Lit.47.a.&note7.]

8.Co. 165.a.7.Co.76. Dy. 6. pl. 2. 3. Aſſ. 9. Plo.132. 1 Ro.Rep.81.

* [276. a.]

26.H.8.2.a. Plo.132.b.

Co. Lit. 388. a. 47. a.

6.Co.76.Dy.193.pl.27. Wills, 3. Ley. 16.

Trinity Term,

10 Queen Elizabeth.

If before waſte brought the leſſee repair, he muſt plead it ſpecially, for he may not give evidence of it on the general iſſue. Co. Lit. 53. a 283. a. 38. Aſſ 1. 31. 13 H. 21. 12. H 8. 1 a 5. Co. 119. b. pleaded ſpecially, 29. E. 4. 18. b. F. Waſt. 30. Dy. 28. 41. a 183. a 305. 2. Ro. Ab. 682. [Bul. Ni. Pr. 120. Heath, 64.]

(51) IN waſte aſſigned in houſes the defendant pleaded *nul waſte fait*, and gave in evidence that the houſes were ſufficiently repaired before the writ purchaſed. And by the opinion of the Court, this evidence does † *not* maintain the iſſue, but it ſhould be pleaded in bar, becauſe the waſte is acknowledged to have once been.

† In the laſt Edit. and in that of 1621, and in the firſt of 1585, this word is omitted, but *ne* is inſerted in the old one of 1597.

Baſſet *againſt* the Corporation of Torrington.

The laſt patentee ſhall not have a *ſcire facias* to repeal a former patent, though he ſeem to have right
If the laſt patent be of fairs and markets holden at different times from thoſe by the firſt patent, it is no cauſe of repeal. Yet here were the words "*niſi ad nocumentum &c.*" therefore ſee 1. Co. 49. 2. And. 156. Mo. 416. [17. Vin. Ab. 102.]

Co. Lit. 47. a.

(52) KING *Henry* 8. was ſeiſed in fee of the manor of *Torrington* in the county of *Devon*, and of a market within the ſaid manor holden every *Saturday* in every week, and of a fair there annually holden on the eve, and the day, and the morrow of *Saint Michael* the arch-angel, parcel of the poſſeſſions of *H.* late Duke of *Richmond* and *Somerſet*; and by his letters patent bearing date the 27th of *February*, in his 36th year, granted to one *Viſicke* and two other merchants of *Torrington*, a market within his manor of *Torrington* in the county of *Devon*, and his fairs there annually holden at the feaſt of *Saint Michael* the arch-angel, for the term of twenty-one years, rendering annually ſeven pounds, whereof ſix pounds thirteen ſhillings and four-pence was the ancient rent; and died ſeiſed * &c. And alſo King *Ed.* 6. and Queen *Mary* in her ſecond year, by her letters patent, incorporated the town of *Torrington*, and made it a borough and corporation of a mayor, ſeven aldermen, and eighteen burgeſſes, to relieve the town and inhabitants; and granted to them, that they and their ſucceſſors might have and hold from thenceforth a market every *Saturday* in each week in the ſaid town and borough of *Torrington*, and two fairs there annually, *s.* one on the feaſt, vigil, and morrow of *Saint Michael* the arch-angel, and the other on the day of *Saint George* the martyr,

* [276. b.]

22. H. 6. 14. b. 11. H. 4. 5.

martyr, and the two next following days, unleſs that market and thoſe fairs ſhould be to the detriment of the neighbouring markets and neighbouring fairs; and alſo granted divers other liberties and caſualties to them, rendering a rent of five pounds. (53) And in the *May* following, Queen *Mary*, reciting the ſaid leaſe to *Viſicke &c.* by the words compriſed in the patent thereof, and the reſervation of the rent of ſeven pounds, and alſo the ſaid incorporation and grants to them made, and the rent of five pounds, granted the reverſion of the ſaid market within the manor of *Torrington* and the ſaid fairs on the feaſt of *Saint Michael* the arch-angel, and the aforeſaid rent of ſeven pounds, and the ſaid rent of five pounds, and alſo the ſaid manor of *Torrington*, and all markets and fairs annually holden within the ſaid manor, to *James Baſſet* in fee, reſerving a ſocage tenure, and twenty-nine pounds three ſhillings rent, whereof he died ſeiſed; after whoſe death, and after the expiration of the ſaid term of twenty-one years, *P. Baſſet* his ſon and heir being within age, making ſuggeſtion by guardian in the chancery, that the ſaid markets and fairs granted to the ſaid corporation are to the detriment of the ſaid markets and fairs of the ſaid *P.* whereof the reverſion had deſcended to him, without ſhewing the cauſe, (by reaſon of vicinity or otherwiſe), brought a *ſcire facias* againſt the corporation to annul their letters patent as to the markets and fairs &c. Who came by garniſhment, firſt, by proteſtation denying the ſeiſin, but for plea they ſay, that the town and borough of *T.* is within the manor of *T.* and that it was an ancient town from time whereof memory &c. and incorporated by the name of the mayor and burgeſſes of *Torrington*, and that the ſaid market and fair of *Saint Michael*, its vigil, and morrow, for all the ſaid time hath been holden within the ſaid manor, *s.* in the aforeſaid town and borough of *T.* only, and not elſewhere without; and for their market preſcribe in the ſeiſin of the mayor and burgeſſes paying to the King &c. three pounds rent: ſhewing moreover, that *Viſicke* and the other two had aſſigned and granted over by their deed ſhewn to the Court all their ſaid intereſt and term in the 37th year of *Hen.* 8. to one *Walter Dame* then mayor of *Torrington* aforeſaid, and to the burgeſſes thereof, whereby they were poſſeſſed of the market and fair: and * being ſo poſſeſſed, the new incorporation and grant was made by the Queen *Mary* to them as above, ſhewing alſo the act of confirmation

Br. Action ſur le Caſe, 57.

Dier, 198. a.

4. Mar. 153.

* [277. a.]

firmation of the letters patent made by the Queen in her fifth year; with an averment that the market and fair for which they proſcribe, and the market and fair mentioned in *Viſicke* and *Baſſet*'s letters patent are all one and not different &c. Upon which *Baſſet* the plaintiff demands that the letters patent made to the mayor, aldermen, and burgeſſes of *Torrington* ſhould be enrolled *verbatim*, and they are ſo. And upon this the plaintiff demurred in law. (54) And afterwards it was argued by the Counſel; and the opinion of CORDEL, *Maſter of the Rolls*, DYER and SOUTHCOT, *Juſtices*, the *ſcire facias* does not lie, becauſe it is brought by the laſt patentee againſt the oldeſt; which is contrary to the books and precedents, and the common courſe. Alſo becauſe the patents are of ſeveral diſtinct things, and not of one and the ſame thing, yet the better right is in *Baſſet*, *s.* the laſt patentee as it ſeems.

Dy. 242. a. Ro. Ab. 191. Scire Facias 175. 15. E. 4. 7. Dy 33. 149. 194. 9. H. 8. Cro. 95. 37. H. 6. 14 a. 6. E. 4. 9. b. 39 H. 6 33 a. 15. E. 4. 7. a. 1. Co. 94. 8. E. 4. 6. a. 31 El. 198. a.

[See Com. Dig. Patent. F. per totum.]

Whether after lapſe to the king, inſtitution and induction by the metropolitan of the patron's preſentee, can prejudice the King, or is the King bound to admit him, *qu.*

(55) THE gift of a benefice came to the Queen by lapſe through the default of the ordinary of the dioceſe, and of the metropolitan: and notwithſtanding this, the clerk of the rightful patron is inſtituted, admitted, and inducted by the metropolitan; Whether this ſhall prejudice the Queen, or the Queen ſhall be bound in law and right to admit the preſentee of the patron, if it had been made to the Queen; *quære.* See a ſimilar caſe, *H.* 18. *Eliz. poſt* fol. 347. pl. 12.

2. Ro Ab. 368. Stamf. 33. Plow. 498. b. N.B 38. f. 13. E. 4. 13. Br. Preſent' 25. 14. H. 8. 17. a. 1. H. 4. 8 a. Co. 7. 28. a. Ow. 2. 5 9. Dy. 339. 13. E. 4. 3. b. Dr. Stu. 126. a. 127. a. Mo. 900. 2. Cro. 216. Goldſ. 83. pl. 4. [4. Bac. Ab. 202. 2. Black. Com. 277. Wats. Clerg. L. 116, 117, 118.]

(55) The biſhop is bound by ſuch preſentment after ſix months, if it be before collation, 18. *H.* 7. Cro. 40 [50. pl. 1.] 38 *E.* 3. 2.

The ſame caſe pleaded in the † New Book of Entries 48. where it is admitted, that if the preſentee of the patron had not been dead, the Queen ſhould preſent, but the preſentee being dead the Queen cannot have the ſecond turn: and there the title of the Queen was by lapſe. But ſee Keilway, 50.

The Biſhop, after collating by lapſe, and before induction, may refuſe to admit the patron's preſentee.

(56) ALSO if the Biſhop collate his own clerk by lapſe and before induction the patron preſent one to the Biſhop, he may refuſe to admit him; and this by the opinion of the Juſtices. A like caſe *H.* 18. [*El. poſt.* fol. 348. pl. 12.]

Fulb. 35. N.B. 38. 14. H. 8. 12. 44. F. 3. 3 b. 11. H 4. 9. a 22 H 6. 27. a. 21. E. 4. 34. b. 26. H. 8. 3. a. 33. H. 6. 24. a. 18. H. 7. Cro. 50. 11. H. 4. 83. Ante, 15. 3. Ro. Abr. 367. 8. Hutt. 24. Hob. 152. [Wats. Clr. L. 117. Com. Dig. Egliſe, (H. 13.)]

(57) A

(57) A WARDSHIP eſcheated to the late Biſhop of *Durham* for a tenure of him *in capite* (*a*), and before any ſeiſin by him made of the body or land, the biſhoprick becomes void; and now there is another Biſhop: Whether he, or the Queen ſhall have the wardſhip? And by the opinion of the Counſel in the Courts of Wards, the Queen ſhall not have it, nor the ſucceſſor, notwithſtanding *M.* 6. *E.* 2. [*Fitz. Ab. Garde*, 120.] 40. *E.* 3. [14. b.] And *E.* 2. *H.* 4. [19. a. pl. 11.] but rather the executors or adminiſtrators of the predeceſſor &c.

Wardſhip for a tenure in chief eſcheats to the Biſhop who dies before ſeiſin, neither the King, nor the ſucceſſor ſhall have the ward, but his executors.
Co. Lit. 90. pl. 359. Dy. 30. 50. E. 3. 26 F. Gard. 73. B. 9. 22. Aſſ. 28. 44. E. 3. 3. b. F. Gard. 2. Fitt. 33. q. 8. 11. H. 4. 9 a. 82. 9. H. 4 9. 2. Ro Abr. 503. N. B. 33. Q. con.

(57) Fulb 143. Ante, 25. pl. 163. KNIGHTLEY. It ſeems to me that if the Biſhop in this caſe accept a leaſe for life of the tenancy, and during the ſuſpenſion a wardſhip eſcheat, and the Biſhop die, the King ſhall have the ward and not the executors, becauſe the teſtator was entitled to no wardſhip.

(*a*) I ſuſpect that this ſhould be *by knight ſervice*, as Lord Coke, 1. Inſt 90. a. puts it, for which alſo this caſe is cited, becauſe tenures *in capite* could be only of the King; unleſs the Biſhop had a leaſe from the King of the tenancy as is mentioned in the note, yet all the Editions have *in capite* But by 12. *Car.* 2. c. 24 all theſe tenures with wardſhip and their other dependencies are aboliſhed.

Eſtofte *againſt* Vaughan.

(58) ONE *Eſtofte* brought a formedon in remainder againſt *Vaughan*, as couſin and heir to one *Chriſtopher Eſtofte* his uncle. And by the writ and count it was ſuppoſed that one *Eglisfield*, after the ſtatute of 27. *H.* 8. [c. 10.] gave the land to divers perſons, to them and their heirs, to the uſe of *Eglisfield* himſelf, and of the heirs of his body begotten, and for defect of ſuch iſſue to the uſe of the ſaid *Chriſtopher Eſtofte* and his heirs; and becauſe *Eglisfield* was dead without iſſue &c. the right remained to the aforeſaid demandant as couſin and heir, *s.* * &c. And the tenant required the charter witneſſing the gift, and the remainder aforeſaid to be ſhewn to the Court, upon which requiſition

Ceſtuy que uſe in remainder brings a formedon, he needs not produce the deed creating the remainder, for it belongs to the feoffees; or the remainder might commence without deed.
18. H. 8. 4. N Ben. 32. Dier, 180, 181. Noy, 145, pl. 631. 10. E. 3. 33. F. Nat. 219. Antea, 29. Br. Monſtr. de faits, 1. 5. 22. H. 6. 1. 35. H. 6 32. 40. E. 3. 12. a. 10. E. 4. 1. a. 21. H. 6. 24. 6. H. 4. 3. Plow. 50. 148, 149. 7 H. 4 10, 11.

* [277. b.]

(58) Co. reſolved in *Digge's* caſe (*a*), that there is no need to ſhew the deed in this caſe: otherwiſe upon covenant with a ſtranger to the uſe of another. 4. *El. B R.* accordingly.
If an advowſon be granted to one to the uſe of a third perſon, his *ceſtuy que uſe* at this day ought to plead the grant of this [to be] by deed, but not to ſhew it. *H.* 6. *Jac. C. B.* Cro. Jac. 217. (*b*)

(*a*) *Digge's* caſe is reported in 1. Co. 173. and Mo. 603. but this point does not appear.
(*b*) By 16. and 17. *Car.* 2. c. 8. §. 1. no judgment after verdict ſhall be ſtayed or reverſed for defaults of alleging the bringing into court of any deed mentioned in the pleadings. And by 4. and 5. *Ann.* c. 16. this is aided on general demurrer.

there

there was a demurrer in law, &c. but before the next Term the demandant died, whereby &c. But by the opinion of the JUSTICES *primâ facie* it ſeemed that the demandant in this caſe needed not to ſhew the deed of remainder for two reaſons, one for that the remainder may commence without deed in this caſe, and alſo the deed does not belong to him, but to the feoffees &c.

18. E. 4. 12. 41. E. 3. 23. 20 H 6. 20. 42. E. 3. 43. a. 7. H. 6. 2. 14. 21. H. 6. 1. 7. 6. 12 H. 4. 5. a. 29. 14 H 8. 8. 3. H. 6. 21. 44. E. 3. 6 45. E. 3. 8. 10. 46. E. 3. 16. 9. H 5. 5. 11. H. 4. 83. 2 Ro. Ab. 91. 49. E. 3. 20. [See Co. Lit. 6. note (4), and Carth. 316]

A. deviſes his term to *B* for life, remainder to *C* and makes *B.* executor, who enters generally; *C.* cannot have account againſt *B.*'s executor for the profits: 1ſt, for want of privity; 2dly, becauſe, without ſhewing any election, *B.* took as executor. 3d, this remainder of the term is void

2. H. 6. 4. 35. H. 6. 8. Swinb. fol 51. Dy. 74 253. b. 10. Co. 87. Plow. 540 8. Co 96. 2. H. 4. 73. Dy 152. 23. B.N.C. 454. 334. 209.

[See Plow. Com. 520. the books cited in marg. note (*b*) there.]

28. H. 8. 7. a 4. Mar. 140. b 19. El. 298. b. Perk. 110 2. E. 4. 13. b. 37. H 6. 30. a. Dier, 74 a. Mo. 759. 10. Co. 47. Plo. 523.

[Ante, 7 b note (*a*), and further as to the deviſe of a term with remainder over, Fearne Cont. Rem. 3 edit. 342. 345. 360. 375. 385.]

(59) A TERMOR deviſed his term to one for the term of his life, remainder to another, and made the deviſee his executor by the ſame will, and died; the deviſee proved the will, and entered, and made his executor, and died: and the executor entered and took the profits for a year, againſt whom he in the remainder brought an action of account as bailiff &c. And by the opinion of ALL THE JUSTICES of the Bench, the action does not lie, for three cauſes: 1ſt, For default of privity, and for that he was never in poſſeſſion of the land, nor took any profit thereof. Alſo for that the remainder is void, for the deviſee firſt entered as executor, which was his colour and cauſe firſt to come upon the land: and he hath not declared by any act that his intention was to execute the deviſe; but if he had any co-executor, and would not ſuffer him to join in the occupancy with him, that would have been a plain declaration of his intentions that he took it as deviſee, and not as executor, wherefore &c. But three, *ſ.* WELSH, WESTON, and HARPER, agreed, that the remainder of a term deviſed to one for term of life, is good by deviſe, but not by eſtate executed in the life-time; Yet *quære* the firſt. A ſimilar caſe *poſtea, fol.* [358. b. pl. 50. and 367. a. pl. 39.]

(59) *H.* 36. *Eliz. B. R. Rot.* 56. *Pannell* and *Penn*'s caſe [Cro. Eliz. 347. Mo. 350.], *Hil.* 36 *Eliz.* in the argument of *Portman* and *Wiles*' caſe [reported in Cro. Eliz. 386. Mo. 352.], TANFIELD ſaid, that if the deviſee being executor enter generally, he ſhall be ſaid in as legatee [executor]. It was ſo adjudged, 19. *El.* in *Lord Windſor*'s caſe [3. Leon. 35.]

Eaſt. 41. *Eliz. Saunders*' caſe [reported 5. Co. 12. Cro. Eliz. 653. and 1. Brownl. 241, but not ſame point]. PER CURIAM, If the legatee being executor enter generally, he ſhall be in as executor; and *à fortiori* in this caſe, becauſe he afterwards proved the will in his name, and the name of the other executor.

Sta-

Stathome's Caſe.

Lands in the hands of the prior of Saint John's of Jeruſalem are exempt from tithes, but his farmer pays—he makes a leaſe, and during the term the houſe is diſſolved, and the king grants the reverſion, his patentee ſhall hold the land free from tithes, but his leſſee ſhall pay. [Owen, 46.] Dr. Ridley, 160. 2. Co. 44. b. 2. Keble, 61. Mo. 532. Raſ. Proviſion and Premunire, 16. 30. H. 8. 43. b. 18. El. 349. b. Co. Magn. Chart. 652. Hob. 297 Raſ. Monaſtery, 11. 3. Cro. 579. Dy. 349. 16. 1. Leon. 332. 2. Co. 47. b. [1 Jones, 182. 1. Freem. 299. Gilb. Rep. 216. Gibſ. Cod. 670. Seld. on Tithes, cap. 6. § 5. and Mr Leach's note to Cro. Jac. 559. caſe 6.]

(60) THE prior of the diſſolved houſe of *Saint John*'s of *Jeruſalem* had this privilege from *Rome*, *s.* "That the Ciſtertians, Templars, and Hoſpitallers ſhould "not be bound to pay the tithes of their farms which they "cultivate with their own hands, or at their own expence;" but their farmers and all other occupiers paid tithes according to the ſtatute 2. *H.* 4. c. 4. The ſaid prior with his brethren made a leaſe of a manor for years, two or three years before the diſſolution, which leſſee paid tithes to the church of *Rocheſter*, as appropriate. And after the diſſolution the King granted the reverſion of the manor to one *Stathome* and to his heirs in as ample manner as the prior &c. The leaſe is expired; Whether he and his heirs, having the manor in their own hands, ſhall be diſcharged of tithes or not, was in queſtion in the Chancery. And upon conſidering the ſtatute 31. *H.* 8. c. 13. it ſeemed before the Lord Keeper to CATLYN, SAUNDERS, SOUTHCOT, and DYER, and * to his Lordſhip himſelf, that they ſhall be diſcharged until they let and ſet it to farm &c.

[* 278. a.]

(60) This privilege of the Ciſtertians extends to their woods, and meadows, and paſtures, as FOSTER cites to have been adjudged, that paſture near *London* which was in the hands of the Hoſpitallers was diſcharged from tithes.

Mich. 18. *Jac. C. B.* it was ſaid by the Court that the Council of Lateran made in 17. John [See 2. Inſt. 652.] diſcharged the friars of the order of Ciſtertians; and that this only diſcharges all poſſeſſions then in their hands, and not others. [Bul. Ni. Pr. 189.]

Hil. 2. *Jac.* between *Quarles* and *Spurling* [Cro. Jac. 57 Mo. 913. it was adjudged, that the lands of the prior of *Saint John* ſhould pay tithes in whatever hands they are, becauſe they were not diſſolved by the ſtatute of 31 *H.* 8. [c. 13] but by a ſpecial ſtatute of 39. *H.* 8 [32. *H.* 8 c. 24.] which is as high a means as the ſtatute of 31. *H.* 8. And the ſtatute of 31 *H.* 8. which ſays that the lands ſhall be diſcharged which afterwards come *by any means*, ſhall be conſtrued by any inferior means, according to the reſolution in the Archbiſhop of *Canterbury*'s caſe [2 Co. 46].

Hil. 17. *Jac. B. R. Porter v. Bathurſt* [Palm. 118. 2 Rol. 42 Cro Jac. 559] In a prohibition a ſuggeſtion was, that the Abbot of *R* was ſeiſed in fee of the manor of *A.* from time whereof &c. and that the abbot was of the order of Ciſtertians, which order was diſcharged &c. and died. Stat. 31. *H.* 8 Iſſue was joined that the abbot did not hold it diſcharged in manner and form; the jury found as above, and moreover, that in 15. *H.* 8. *William*, then Abbot of *R.* leaſed for thirty years, and that during this leaſe the abbey was diſſolved, and the leſſee at the time of the diſſolution paid tithes. And Whether that ſhall be a ſufficient diſcharge for the now feoffee who manures, and occupies it in his own hands, was the queſtion. And judgment was given that tithes ſhould not be paid. MONTAGUE, *Chief Juſtice.* Where the ſuſpence is by leaſe, and [there was] payment of tithes, in caſe of unity there the preſcription is deſtroyed, but where the preſcription is by reaſon of the order there, although it be in leaſe at the time of the diſſolution, ſtill the privilege of the order remains when the land comes back into their own hands. It was reſolved by ALL THE JUSTICES, *B. R. M.* 2. *Car.* that tithes ſhould not be paid by farmers of the lands of *Saint John* of *Jeruſalem*, of ſuch land as was in the hands of the priory See the caſe between *Quarles* and *Spurling* in prohibition, *M.* 1. *Jac.* in the ſtar-chamber, adjudged *contra* to this, and this houſe of *St John*'s came to the king by the act of 32. *H.* 8. And it did not give exemption of tithes, as the ſtatute 31. *H.* 8.

Michaelmas Term,

10. and 11. Queen Elizabeth.

A variance not in the ſubſtance of their name will not vitiate a leaſe made by a corporation. As one by the dean and chapter of the cathedral church of the holy and undivided Trinity of Carliſle, under the name of "*Dean of the cathedral church of the holy Trinity in C. and the whole chapter of the church aforeſaid*," is good.
10. Co. 124. b. 2. Bul. 303. Jen Cent. 4. ca. 3. 4. Mar. 150. a. 15. E. 4. 15. b. 3 Co. 73. b. 33 H 8. B. N C. 205. 38. E. 3. 28. Mo. 233.
Corporation, Br. 8. and 33. Dy. 98. 10. E. 4. 12. a. 21. E. 4. 56. Ben in Keil. 213, 4.
[3. Vin Ab. Corporation (G 4.) 1. Bac. Ab. Corporation (C. 2.) Shep. Touch 233. Cowp. 29 4 Term Rep. 425. 2. Hen Bl. 113, 114.]

The Caſe of the Corporation of the Cathedral Church of Carliſle.

(1) GERRARD, *Attorney General* of the Lady the Queen. by command of the Queen herſelf, aſked this queſtion of all the Judges, and Chief Baron, *s.* The dean and chapter of *Carliſle* being incorporated in the 33d year of *H.* 8. by the name of *the Dean and Chapter of the cathedral church of the holy and undivided Trinity of Carliſle*, made a leaſe of certain of their lands by the following name, *s. the Dean of the cathedral church of the holy Trinity in Carliſle, and the whole chapter of the church aforeſaid*; Whether this be good and valid in law, *quære.* And it ſeemed to ſix Judges, *s.* DYER, WESTON, WELSH, SOUTHCOT, CARUS, and HARPER, that the leaſe is good enough notwithſtanding this variance, which is not in the ſubſtance of the name. But CATLYN, SAUNDERS, and WHYDDON, *contrà.* A like caſe *M.* 35. *H.* 6. 5. 6. *Prior of the Church of Saint Peter and Paul of B.* was the foundation, and in the ſuit he was called *Prior of the Church of Saint Peter of B. only*, and therefore it is not good, if there be no eſtoppel.

Whitton *againſt* Sir Henry Crompton.

Formedon *in deſcender* is out of the ſtatute of Limitations, 32 H. 8. c. 2. nor was ever within any of the old ſtatutes for limiting actions(*a*).

(2) FORMEDON brought by one *Whitton* againſt *Sir Henry Crompton*, Knight, in the *deſcender*; and count upon a gift and eſplees in the great-grand-father in the time of *Hen.* 6. and ſhewed in the conveyance that the

(2) Formedon *in deſcender* is out of the ſaid ſtatute of 32. *H.* 8. of Limitations, for it is no writ of right; for a man may have ſuch a writ for rent-charge. Alſo it is a writ of poſſeſſion, for it is brought of the firſt gift; for if the cauſe of action be ſuſpended, or if the cauſe of avowry for rent ſervice be ſuſpended, ſtill he ſhall have this writ or avowry &c. notwithſtanding the limitation paſt. A *ſcire facias* which is to execute a judgment, and a *quid juris clamat*, are not remedied by this ſtatute, for no land is demanded by them; the gift, and not the deſcent, is traverſable: and thereupon ALL THE JUSTICES agreed that the writ and count were good. Bendl. [194] *Mich.* 10. and 11 *Eliz. Rot* 843. *Paſ* † 84.

(*a*) But now by 21. *Jac* 1. c. 16 §. 1. all formedons muſt be ſued within twenty years. See Co. Lit. 115. a. note (2).

father

father of the demandant died within fifty years next &c. and did not ſhew in fact any ſeiſin in him at all within that time, nor of any other anceſtor, ſince the ſaid ſeiſin in the time of *Hen.* 6. (*b*) therefore WRAY demurred in law upon the count &c. For the ſtatute of Limitations does not ſpeak of ſuch a formedon, and although he ſhall have ſixty years for the ſeiſin of the anceſtor, yet the time above much exceeds that; and the words of the ſtatute are, "*none ſhall make* "*title or claim &c.*" And if the tenant in tail diſcontinue, and remain alive for ſixty years after the diſcontinuance, his iſſue hath no remedy, *quære.* But afterwards the opinion of HARPER, DYER, and WESTON, *Juſtices*, was, that this formedon is out of the ſtatute aforeſaid, *s.* 32. *H.* 8. [c. 2.] And the ſeiſin of the donee was never traverſable, nor intended to be within the ancient ſtatutes of Limitations, for the formedon was given after the making * of the ſtatute of *Weſt.* 1. ten years &c. But WELSH doubted, and afterwards *Whitton* had judgment by confeſſion; and agreement made between the parties, through the mediation of DYER, that *Whitton* for forty pounds ſhould confirm a leaſe made by *Crompton* for eighteen years to come.

1. And. 16. 10. El. Benl. in Keilw 212. pl. 24. [Bendl. 193. and Aſton's Ent. 401.] } S.C

8. Co. 65. Raſ. fol. 174. b. Dy. 290. 315. b. 4. Co. 11. a.

[Sed vide Booth Real Act. 145.]

* [278. b.]

(*b*) A writ of right cannot be maintained without ſhewing an actual ſeiſin by taking the eſplees either in the demandant himſelf, or the anceſtor from whom he claims. 1. Hen. Bl. 1.

(4) THE ſheriff returned on an *habere facias ſeiſinam* in dower *de tertiâ parte &c.* that he offered to the demandant ſeiſin of the third part of the tenements aforeſaid, and ſhewed in certain the parcels which made the third part by metes and bounds in ſeveralty according to the tenor of the writ, and ſhe refuſed to receive them from him. *Quære* what remedy the demandant ſhall have now, &c. But in the Term of *Michaelmas* in the 14th year, it was holden by HARPER and DYER, that the entry of the demandant at all times afterwards was lawful, becauſe that the certainty appears &c. And alſo the return was ſeen and read, and there appeared by it a repugnancy, for in the beginning of the return it was, that the ſheriff had cauſed ſeiſin to be had, and ſhewed of what; and in the concluſion, "*all which I offered to deliver* "*&c. but ſhe refuſed to receive &c.* wherefore the demandant

The ſheriff aſſigned dower by metes and bounds, the demandant refuſed to receive it, ſtill ſhe may enter at any time after; but ſhall not have an *alias habere facias ſeiſinam.* Dy. 73. Br. Dower, 16. 45. E. 3. 5. it. 4. Plow. 13. and 14. [2. Bac. Ab. 134, 135.]

ant agreed to the aſſignment, and to recover thirty pounds for arrears ſince the judgment, by motion of the Court: and ſo it was ſettled, for the Court would not agree to grant an *alias habere facias ſeiſinam* at the requeſt of the demandant, for that would be a bad precedent, and was never ſeen.

Gawdy's Caſe.

The marſhal by his patent might make a deputy; the deputy ſuffers one in execution to go into Norfolk with a keeper. The deputy held liable, though the action was brought in Middleſex, ſuppoſing the eſcape there, and not in Surrey, where the priſon is.

3. Keble 591. 657. 593. Noy, 27. 9. Co. 97, 98. [Bac. Ab. Eſcape, B.]

[See Noy, 70.] Plow. 37. Dy. 295. 297. 39. H. 6. 34. a. Co. Boyton's caſe. 2. Inſt. 382. 10. E. 4. 10. b. 3. Mar. 121. b. Dy. 238. 275. a. 15. E. 4. 18. 14. E. 4. 3. Br. Eſcape, 36. 9. Co. 98. a. 7. Co. 2. 30. H. 6. 6. 40. E. 3. pl. 37. Br. Lier, 33. Antea, 66. pl. 11.

(5) THE Duke *of Norfolk*, being the Marſhal of *England*, having liberty to make a deputy for term of life, granted the deputation by the name of Marſhal and office of Marſhalſey to *Gawdy* for the term of his life, by letters patent enrolled in *B. R.* and *Gawdy* was admitted, and ſworn to exerciſe the office, &c. And afterwards one condemned in two hundred pounds debt in the ſame court is committed by judgment of the Court to the Marſhal, *prout* the form of the judgment is. And he remained in execution there for the condemnation until he was permitted by *Gawdy* to go into *Norfolk* upon his own buſineſs for a certain time with a keeper; and he returned to priſon at the day: and upon this matter the plaintiff brought a bill of debt in the ſame court againſt *Gawdy*, calling him under-marſhal, and keeper of the *Marſhalſea* priſon, and ſuppoſed that he permitted the priſoner to go at large, which was traverſed by the defendant, 1. that he did not permit the priſoner &c. upon which they were at iſſue to the country. And in evidence to the jury the caſe appeared as above, and a demurrer to the evidence, Whether *Gawdy* ſhall be charged with the debt upon all this matter, by reaſon that he is not Marſhal, but only under-marſhal, *prout patet* by the ſaid enrolment in the ſaid court. And alſo the action was brought in *Middleſex*, ſuppoſing the eſcape at *Shoreditch* in the ſame county, and not * in *Surrey*, where the *Marſhalſea* is; therefore *quære*. But at length, in this Term, by great conſideration, judgment was given for the plaintiff againſt *Gawdy*.

[1. Jones, 144. 1. Sid. 364.]

* [279. a.]

14. E. 4. 3. 15. E. 4. 19. Plow. 37.

(5) *Mich.* 23. and 24. *Eliz. Sir John Arundel's* caſe [Savil, 12, 11]. One condemned in debt in the admiralty court was committed to priſon. *Sir John* having the liberty of the gaol, the under-gaoler permitted him to eſcape; and holden 1ſt, That the admiral may hold his priſon where he will. 2d, That *Sir John* was chargeable in debt. 3d, That two or three eſcapes ſuffered by the under-gaoler forfeited his office, and the liberties.

(6) *A. B* bound by recognizance to *C. D.* to perform the covenants of a pair of indentures, &c. one whereof is, that *A. B. ſhall permit the ſaid C. D. and all his tenants in Dale to have common of paſture for the cattle in the open fields of Dale, when they ſhould lie fallow.* And the other covenant was, that the ſaid *A. B. ſhould not do, permit, or cauſe to be done, any act or thing by which the uſe or courſe of the ſaid fields ſhould be altered in any other plight than was uſed at that time.* In *ſcire facias* brought in the Chancery upon this recognizance, the defendant to the firſt covenant pleaded, that *he had permitted the ſaid C. D. and all his tenants in Dale to have common in the ſaid fields of Dale when they lay fallow, &c.* And to the ſecond covenant he pleaded in bar generally, *that he had not altered the courſe, &c.* Whether the general pleading was good or not in law, was demurred: and the opinion of divers Juſtices was that the plea is good; But HARPER, *contrà, totis viribus*; yet it was ordered againſt him, *Eaſt.* 12. of the preſent Queen.

In *ſcire facias* on a recognizance to perform covenants, *to permit the plaintiff to have common in D. and not to alter the courſe of the fields*, plea that defendant *hath permitted &c. and hath not altered the courſe*, is good.

Dy. 249. pl. 51. 8. Co. 133. Dier, 184. 255. a. 4. H. 7. 12. 2. H. 7. 15. 6. H. 7. 6. 12. H. 7. 8. 9. E. 4. 8. 14. E. 4. 2. b. 2. Co. 3. Br. Conditions, 2. 1. Keble, 413. 1. Inſt. 303. b. [Cowp. 125. 578. 1. Black. Rep. 1312. Bul. [Ni. Pr. 165, 166.]

(7) TENANT for term of life, remainder in tail: the tenant in tail made a leaſe for a term of years to commence immediately; and to aſſure the term, a fine was levied by a writ of covenant brought by the tenant in tail againſt the termor, and he acknowledged the land to the tenant in tail, as that which he hath of the gift &c. and the tenant in tail granted and rendered the land to the conuſor for the term of years, rendering rent &c. And it paſſed with proclamations: and then the tenant in tail died; and afterwards the tenant for life died, and the termor entered, and at the next day of payment the iſſue in tail accepted the rent. The queſtion was, Whether this ſhall bar him of his entry. And if tenant in tail make a leaſe for years, to commence after his deceaſe, rendering rent; although the iſſue accept this rent, it ſhall not bar his entry, but he ſhall avoid the term, by MANWOOD, becauſe the leaſe did not take effect by coming into poſſeſſion in the life of tenant in tail. But CATLYN denied this.

A. tenant in tail expectant on an eſtate for life leaſes to *B* who levies a fine to *A.* rendering back to him for the term paying rent. *A.* dies, and ſo does the tenant for life, the iſſue in tail accepts the rent. Whether this ſhall bar his entry? *qu.* [See Plow. Com. 430. 8. P.] Weſt's Precedents Fines, fo 66. ſec. 180. [Co. Lit. 215 a. Cowp. 483. Dougl. 53. 1. Term Rep 95] 7 Eliz. 244. a. 252. b. Br. Fines, 106. 118. B. N. C. 285. 342. 3. Co. 49. Dy. 246. 111. 215. b. 1. Keble, 911. 3. E 6. 69. a. [3. Bac. Ab. 311, 313. Salk. 338. See 1. Inſt. 46. b.]

(8) ONE

By the death of one of the plaintiffs in *quare impedit* the writ abates.

* [279. b.]
10. Co. 134. b. Co. Lit. 198. a. 7. Co. 26. b. [and Cro. Jac. 19. contra.] 13. H. 8. 13. 38. E. 3. 35. 14. H. 4. 12. 7. H. 6. 19. 7. E 3. 364. 34. E. 3. 55. 27. H. 8. 26. 5. E. 3. 3. 34. H. 6. 9. Br. Quare Impedit, 6. Breve, 53. 10. Co. 134. b. 7. H. 4. 26. b. 7. H. 4. 34. a. 9. H. 6. 57. a. 12. R. 3. 1. b. 9. H. 5. 6.

(8) ONE of the plaintiffs in *quare impedit*, where the title to the preſentation was by a grant of the next advowſon, died pending the writ. It was doubted whether the writ ſhall abate, or not.* And by the opinion of three Juſtices it ſhall abate *(a)*. And for this ſee *H.* 17. *E.* 3. *tit. Briefe* in *Fitz.* 665. a *quare impedit* brought by a huſband and wife, and a third perſon, the wife died, and the huſband was entitled to be tenant by the curteſy, yet the writ was abated. And *H.* 5. *E.* 3. [*Fitz. Ab. tit. Briefe*, 715.] in *aiel*, one of the defendants being ſummoned and ſevered died, and the writ abated: as in 37. *H.* 6. 12. [9. b.] by the better opinion in *formedon*, yet the contrary is holden in *M.* 9. *H.* 6. [fol. 30. pl.] 1. *obiter*, one of the plaintiffs died pending the writ; and ſo in *monſtraverunt*, 1. *H.* 5. [13. pl. 28.]

(8) † 7. Co. 16. and reported there of *Michaelmas*, before the lord the king, *Rot.* 28. *exhibit. Mr. Noy* brought a *quare impedit* againſt the Prior of *Lanthen*, who pleaded; he dies, yet an inqueſt was taken, and found for the king, the ſucceſſor ſued by petition, and the judgment is reverſed. becauſe a judgment ought by no right to be given againſt a dead man.

(*a*) It ſeems to have generally been ruled againſt this opinion in *quare impedit*, but now, by 8. and 9. *W.* 3. c. 11. § 7. "If there be "two or more plaintiffs or defendants, and one "or more of them die, if the cauſe of action "ſurvive, the ſuit ſhall not abate, but the death "being ſuggeſted on the record, the action ſhall "proceed." See 1. Burr. 363.

Hyckman *againſt* Shotbolt.

Where a man binds himſelf by a wrong name, the action ſhould be againſt him, as named in the bond *alias dict'* his right name.

(9) ONE *William Shotbolt*, Gentleman, was bound in an obligation to one *Hyckman*, and in the obligation he was called *John Shotbolt*, which was a miſtake. But *William Shotbolt*, well perceiving his miſnomer, ſealed and delivered the bond as his deed. In debt brought upon this

(9) ANDERSON and WALMSLEY, 32. *Eliz.* thought in this caſe that the obligee has no remedy he will not appear, for if proceſs of outlawry be awarded againſt him, as he is named in the bond he may reſeize any goods: and if the action be brought againſt him by his true name, he may plead *non eſt factum*; but if he come in and plead a miſnomer, the plaintiff may eſtop him by the bond.

Mich. 32 and 33. *Eliz. C. B.* [Ow. 48.] *Edward Leverſuch* is bound to *Weſt* by the name of *Edmund Leverſuch*. the action is brought againſt *Edward, alias dict' Edmund*, and declared accordingly; the defendant demurred, and it was adjudged for him againſt the plaintiff.

Mich. 8. *Jac. C. B.* † *Dudley* and *Harris*, this ruled accordingly, where his name was *Edmund* and *Edward* in the bond; and † *Coke* againſt *Foſter*, it ſeems that he has no remedy, for he cannot have two names of baptiſm.

bond

bond againſt him by name of *William Shotbolt, otherwiſe called John Shotbolt*; he pleaded *non eſt factum*; and this ſpecial matter was found by verdict at *Guildhall, London*, in this Term. Whether he ſhall be charged by this bond and plea was the doubt; and the *poſtea* is ſpecial as above. And by the opinion of the Juſtices of the Bench, the plaintiff ſhall not recover upon this verdict; but it had been better for him to have brought the action by the name of *John* as he is named in the bond, and then if he had appeared to it, and pleaded as above *non eſt factum*, he ſhould be concluded by the bond. See thereof 3. *H.* 6. [25. pl. 6.] and 34. *H.* 6. [19.] and † 5. *E.* 4. this matter well debated. A like caſe [2. *Rol. Ab.* 135. pl. 2.] between *Turpin* and *Jaxon*, s. *Anne* for *Agnes*, and ſhe ſued by her right name, *nuper dicta Anna*, *Hil.* 18. *Rot.* 738.

Hil. 17. Jac. B. R. Watkins v. Colliers, accord. 2. Cro. 558. 9. 640. 30. H. 6. 5. 14. H. 6. 21. 26. H. 6. 33. 9. Co. 14. Mo. 897. 1. Ro. Ab. 872 28. H. 6. 8. B. Eſtop. 156. 9. H. 5. 8. 40. E. 3. 21. 9. E. 4. 39. 22. H. 6. 48. 50. E. 4. 46. 65. 39. H. 6. 10. 10. H. 6. 8. a. 9. H. 5. 8. a. 18. E. 4. 4. 22. H. 6 59. 22. E. 4. 51. 1. E. 2. 4. 46. 19. H. 6. 39. Faux Impriſonment, 12. 2. Rol. Ab. 135. [1. Bulſt. 216. Gilb. Hiſt. of C. P. 221, 222. Salk. 6. pl. 17. 2. Bac. Ab. 652. 3. Bac. Ab. 616, 617.]

(10) SEE a precedent of a preſcription of wares foreign ſold and foreign bought within the liberty of the city of *York*, to be forfeited and ſeizable by the mayor, ſheriff, and citizens. And in the preſcription they ſhewed, that there were *mayor, bailiffs, and citizens* in the city, from time whereof memory runneth not &c. until the firſt year of *Richard* 2. in which year they were incorporated by the

The cuſtom of foreign bought and foreign ſold within a city preſcribed for as ſeizable by *the mayor, ſheriff, and citizens*, at the ſame time ſhewing that this name was by incorporation of Rich. 2. where before they were *mayor, bailiffs, and citizens*, is good. Eaſt. 28. El. Rot. 351. by Bendloe, ca. 9. between W. Cuſt' and Hy. Litting. Mo. 582. 4. Co. 38. 87. 33. H. 6.

(13) *Mr. Glanvil*, in his reading *Feb.* 5. *Car.* ſaid, that he doubted of this caſe; for he held that this preſcription is bad, and that he had ſearched for the roll of this caſe among the records, but could not find any ſuch; and he founded his reaſon upon the very words of the ſtatute 9. *E.* 3. c. 1. for it is expreſsly contrary to this caſe. Note, that the Abridgment makes a *quære* of this caſe.

Hil. 12. *E.* 1. *C. B. Rot.* 36. On the heavy complaint of the citizens of *Lincoln*, that foreign merchants expoſe to ſale their merchandizes in the neighbouring places to the hurt of the city; therefore it is commanded the ſheriff, that as to the premiſes he keep them in the due and uſual ſtate; and that he attach all thoſe whom he ſhall find to practiſe according to that complaint and ſuit aforeſaid in the aforeſaid place, in merchandizing in that way contrary to the aforeſaid precept of the king ſent to him, and that he have their bodies &c. to anſwer the contempt to the king, and the damages to the citizens.

41. *Eliz. C. B. Waltham*'s caſe, 8. Co. 125. was a grant to the corporation of Dyers of *London* of power to ſearch, and if they find any cloths dyed with logwood that the cloth ſhould be forfeited; and adjudged that no forfeiture can be impoſed by patent of the goods of the ſubject, becauſe *fortior et potentior eſt vulgaris conſuetudo quam regalis conceſſio.*

So the Archbiſhop of *York* preſcribed that none ſhould exerciſe a trade in that city without his licenſe: yet 44. *Eliz.* between *Datey* and *Allen* [Noy. 173. Mo. 671. 11. Co. 84. b.] adjudged that the king cannot grant to one that he ſhall have the ſole traffic of playing cards. [Com. Dig. Trade (D. 1.)' (D. 4.), (B.).]

28. 2. H. 6. 9. 11. H. 6. 18. 50. E. 3. 26. 5. Co. 18. 19. 22. E. 4. 44. Dy. 300. Lat. 74. 10. Co. 129. 2. Keb. 397. Ben. 16. 2. Rol. Ab. 597. [Cro. El. 110. Com. Dig. Trade (D. 2.). 1. Bac. Ab. 675. 1. P. Wms. 184. Cowp. 269.] [See 1. Com. Dig. 123.]

letters patent of that King, to be a *mayor, ſheriff, and citizens.* And this manner of preſcription was allowed, and traverſed. And at the ſuggeſtion of the plaintiff the *venire facias* was awarded to the ſheriff of the city of *York*, from the viſne of the caſtle of *York*, which was next adjacent to the city of *York*, becauſe the ſheriffs and coroners of the city were citizens, &c.

Corbet's Caſe.

*[280. a.]

A prior and convent in 24 H. 8. leaſe for twenty-four years to *A.* and ſoon after make another leaſe for ninety-nine years to *B.* In 30. H. 8. the priory is tranſlated into a deanery, and a new leaſe granted for ninety-nine years to *B.* within one year of the ſtatute of diſſolutions. In 2. E. 6. the dean and chapter ſurrender to the king. Holden, 1ſt, that this is a corporation ſpiritual within the act. 2d, that the act extends to the heir of H. 8. as well as to himſelf. 3d, that *B* 's taking the ſecond leaſe was a ſurrender of his firſt. And 4th, that the laſt leaſe is void, being made within a year before the act, another leaſe ſtill in being.

[See] 2. Co. 49 a. Raſ. Monaſtery, 11. 3. Co. 74. a.

Plow. 177. B. Confirmation, 19.

(11) A LEASE was made by the Prior and Convent of *Norwich* for twenty-four years in the 24th year of *Hen.* 8. and in the 26th year *H.* 8. they made a * leaſe to one *Corbet* for the term of ninety-nine years, to commence from a day before and afterwards. In the 30th year of *H.* 8. the Prior and Convent of *Norwich* were tranſlated and incorporated into a Dean and Chapter, and their poſſeſſions confirmed to them, &c. And in the ſame 30th year they made a new leaſe to the ſaid *Corbet* for ninety-nine years, to commence from a day before: and the firſt leaſe of twenty-four years had yet continuance. And within one year afterwards the ſtatute of aſſurances of the lands of monaſteries &c. [31. *H.* 8. c. 13.] paſſed, which had ſuch words, *ſ.* " All " monaſteries, abbies, priories, nunneries, colleges, hoſpitals, " houſes of friars, and all other religious and eccleſiaſtical " houſes and places which hereafter ſhall happen to be diſ- " ſolved, forfeited, renounced, given up, or by any other " mean come unto the King's Highneſs, and all the lands " &c. ſhall be immediately deemed and veſted in the actual " and real ſeiſin and poſſeſſion of the King our ſaid Sove- " reign Lord, his heirs and ſucceſſors for ever, in the ſtate " and condition as they now be, &c." (12) Note here, there are no ſpecial words of Dean and Chapter, or of cathedral church, &c. Alſo note theſe words, " the King's " Highneſs" *firſt*, and " our Sovereign Lord, his heirs and " ſucceſſors," *after*. Whether this ſhall be intended only of King *Henry* 8. For the Dean and Chapter, after the death

death of him, ſurrendered their church and college, and all their poſſeſſions, to King *Ed.* 6. in the ſecond year of his reign, and a new corporation was then erected and eſtabliſhed, reſerving to the King and his heirs the land in leaſe, which afterwards he granted by patent to one *Ward* in fee: and Whether he may enter and avoid the two leaſes to *Corbet*, or either of them, was the queſtion in replevin in *Norfolk*. And *primâ facie* by opinion of the Court he may, for the intendment of the ſtatute was to annex all the poſſeſſions of ſuch ſpiritual corporations as above to the crown which has continuance and ſucceſſion, and this as well to the heir of *H.* 8. as to himſelf. And this may be collected from the words of the act aforeſaid. (13) Alſo the firſt leaſe of *Corbet* was merged, and ſurrendered in law by the acceptance of the ſecond leaſe, although he had not then poſſeſſion of the land according to *E.* [*M.*] 37. *H.* 6. 4. [*a.* pl. 5.] Alſo the ſecond leaſe is void by the act of 31. *H.* 8. becauſe it was made within a year before the act, the firſt leaſe then in being, and having continuance, &c. yet the Court would adviſe thereon until next Term.

Co. Lit. 338. 215. a. 2. Co. 49. Dy. 273. pl. 37. [Gibſ. Cod. 173.] Co. 10. 67. b. 6. Co. 69. 37 H. 6. 18. a. [4. Burr. 22 o. 3. Bac Ab. 460, 461.] 36. H. 8. 57. a. Co. 10. 52. b. 5. Co. 11. 4. H. 7. 18. b. 31. H. 8. 46. 22. E. 4. 37. Plo. 106. 422. 432. Br. Surrender, 21. 14. H. 8. 15. a. Dy. 141.

* [280. b.]

(14) THE plaintiff in replevin is non-ſuited before the declaration, wherefore the defendant had a *retorn' habend'*, upon which the plaintiff ſued a ſecond deliverance, and had delivery of the beaſts. And afterwards he is * nonſuited again before declaration, wherefore the defendant is to have a retu n irrepleviſable. Whether the defendant ought to make an avowry, ſhewing the certainty of the place, day, and cattle, to the intent to have a writ of inquiry of damages, was doubted; and LONE, *Prothonotary*, ſhewed a precedent in 34. *H.* 8. that ſuch an avowry was made. And ſeveral thought that he need not do it, but he may juſtify the detaining of the diſtreſs until the plaintiff will offer him ſufficient amends for his damages cauſed by his diſtreſs.

After non-ſuit before declaring both on the replevin, and the ſecond deliverance; Whether the defendant, having return irrepleviſable, muſt make avowry to have an inquiry of damages, *qu ?* The avowant having return irrepleviſable, may put the cattle in the pound again, and if they die there a new diſtreſs may be taken. Dy. 41. pl. 4. 3. 4. H. 6. 9. 8. b. 19. H. 8. 11. b. B.N C. 4. [2. Wilſ. 1. 6. Gilb. Replevins, 169, 170.]

(14) *C. B. Jac. per Curiam*, accords with them, for they are to be impounded again 19. *Ed.* 2. Replevin 26. But agreed for law by the Juſtices in *C. B. Hil* 33. *Eliz.* [1. Leo. 220. Ow. 46.] that if one hath cattle delivered to him in *withernam* he may work them, becauſe he has them in lieu of his own beaſts; and it is reaſonable that he ſhould have their labour and uſe, for their paſture.

Retorne d'avers, Br. 12. 35. H. 6. 40. a. 33. H. 6. 1. 21. E. 4. 64. 16. H. 6. Retorn d'avers, 1. [Gilb. Replevin, 61.]

And ſome thought that the defendant in ſuch a caſe may work the beaſts; and others the contrary, becauſe he hath no property in them, but as gage: and he may ſend them back to the common pound, and the owner is bound to find ſuſtenance: and if they die in the pound, that is at the peril of the owner, and not of the diſtrainer, and then he may take a new diſtreſs for the firſt cauſe, becauſe he is not yet ſatisfied, &c.

34. H. 6. 46. 19. E. 2. Replevins, 26. Br. Retorne des Avers, 26. 5. E. 3. 56. 5. H. 7. 9. a. 21. E. 3. 22. b. 13 H. 7. 28. 5. E. 4. 2. Wilf. 313.]

10. Dr. & St. 9. 113. [See 2. Ld. Raym. 720. Salk. 248. 1. Bur. 585.

Wotton *againſt* the Bailiff of Sir A. Cooke.

Avowry damage feaſant in defendant's freehold. Whether the plaintiff pleading coparcenary with the defendant muſt traverſe the ſole ſeiſin, *qu.*
Dy. 183. pl. 58. 260. 2. H. 6. 15. 42. E. 3. 19. Dy 79. 202. 5. 6. H. 7. 13. 5. 28. H. 8. 17. 1. Saund. 208.
[6. Mod. 158, 159. 2. Mod. 60. Carth. 285. Salk. 629, 630.]

(15) IN replevin, the defendant as bailiff of *Sir Anthony Cooke*, Knight, acknowledged the taking in the place, &c. for damage feaſant, as in his freehold: to which the plaintiff (who was *Wotton*) ſhewed that he and *Sir Anthony Cooke* held the land where &c. in coparcenary, as heir to *Sir Ed. Belknap*, Knight, &c. Whether this ſhall be a bar to the conuſance without taking a traverſe that the entire or whole place was the freehold of his anceſtor, &c? for HARPER and WESTON thought that it was not good without a traverſe, but WELSH and DYER, *è contrà*. (16) And at length the iſſue was joined upon the coparcenary, and not upon the whole place being the freehold of *Sir Anthony*, which is only as ſuppoſal, as a declaration, &c. And this plea of coparcenary is but in abatement of the avowry in effect. And in *Michaelmas Term*, 14. and 15. of the preſent Queen [*poſt.* 312. b. pl. 90.], an avowry was made for a rent-charge in fee, ſuppoſing that the grantor was ſeiſed of the place where &c. in his demeſne as of fee at the time of the grant, and the plaintiff ſhewed that the grantor was ſeiſed of an eſtate tail at the time of the grant, and ſhewed of whoſe gift the entail was, and that the grantor was dead, and he was his iſſue and heir of his body &c. This is not good, without a traverſe to the eſtate of fee-ſimple, by the opinion of MOUNSON, HARPER, and DYER, but MANWOOD *contra*.

Dy. 95. b. 318. b. 5. H. 7. 15. a. Br. Traverſe, 286. 3. H. 6. 52. a. 3. H. 7. 5. 14. Aſſ. 3. Plow. 251. a.
[5. Com. Dig. 110. Cro. Jac. 44. But ſee ſtat. 11. Geo. 2. c. 19. §. 22.]

Bullock

Bullock *againſt* Burdett.

East. 7. El. Rot. 1008.

A. ſeiſed of one thouſand acres in fee enfeoffs *B. without deed* of ſeventeen acres, *habendum to him and his heirs at the election of him and his heirs, whenever they pleaſe*, *B.* dies before election:—at any rate his heir might not elect: but this feoffment is void for the uncertainty where the ſeventeen acres ſhall be, as freehold cannot be in abeyance, and by livery they ought to paſs without any interval from the feoffor to the feoffee.

(17) ONE *Richard*, formerly Biſhop of *Saliſbury*, was ſeiſed in his demeſne as of fee in right of his biſhoprick, of the manor of *Sunning* in the county of *Berks*. in which there is a wood containing one thouſand acres called *Berewood*; and being ſo ſeiſed, he enfeoffed one *R. Bullock* of a meſſuage parcel of the manor, &c. and of ſeventeen acres of wood of the aforeſaid * thouſand acres, *to have to him and his heirs at the election of the ſaid R. Bullock and his heirs whenſoever they ſhould pleaſe*, &c. And Whether this election of the ſeventeen acres of wood ſhall deſcend to the heir, and that he may make his election of the ſeventeen acres in the ſaid great wood, this was the matter in law in replevin between *Bullock* and *A. B.* ſervant to *John Ingle-*

(17) *Eaſt.* 37 *Eliz. C. B. Fuller v. Woodhouſe* [1. Rol. Rep. 187.] A man being ſeiſed of lands of five hundred pounds value, covenants to aſſure lands of one hundred pounds value for a jointure, and makes a feoffment of all his lands to the uſe of the indentures. And adjudged by the Court, that this is void for the uncertainty. So, *per Curiam*, if there be a covenant to ſtand ſeiſed of one hundred pounds in land. And ANDERSON ſaid, that it was ſo adjudged in *Sir Thomas Gerrard's* caſe, 21. *H.* 7. 18. 9. Co. 9. 20. *H.* 7. 8. b Keilway, 84. b.

Eaſt. 36. *Eliz. B. R. Gibbon v Warner* [2 Rol Rep. 425.]. *Sir R. F.* deviſed his manor of *E.* to his executors, in truſt that they ſhould be ſeiſed of one hundred marks, part of that manor to the uſe of one, and of another part to the value of twenty marks to the uſe of another, and of other part to the value of twenty pounds to the uſe of another, and that a diviſion ſhould be made by his executors, and that the whole manor ſhall be valued at one hundred pounds, and no more. And it was adjudged that this is ſufficiently certain, and the *ceſtuys que uſes* ſhall be tenants in common immediately without diviſion. And *Mich. 5. Car.* in the argument of *Thomas* and *Morgan's* caſe, which was entered *Eaſt.* 3. *Car. C. B. Rot.* 1339. this caſe was put by RICHARDSON, and agreed to be law; but it is to be taken that the value of the manor was expreſſed in the will, and that he ſaid was the reaſon of the judgment; for the caſe of *Thomas* and *Morgan* [Hetl. 67—97.] was, A fine was levied to the uſes contained in certain indentures, in which was contained, that the conuſees ſhould be ſeiſed of ſo much land as amounted to thirty pounds *per annum* to the uſe of the woman that he intended to marry, that to be aſſigned, and ſet out apart by a ſtranger; and adjudged, that inaſmuch as there never was any aſſignment made, it was entirely void as to the wife, and that he could not enter, nor ſhould be † *tenant* in common with the others to whom the uſe of the reſidue of the land was limited: but otherwiſe it would have been if they had made a valuation of the land.

21. *Eliz.* between † *Evans* and *Mitton*, it was ruled in the Court of Wards, where a fine was levied of one hundred acres of land, four hundred acres lying together, and not particularly pointed out, the conuſee has election, but the heir not.

43. *Eliz.* † *Grace Marſhal's* caſe: A deviſe of two acres of land out of four together is a good deviſe, and the deviſee ſhall have election.

E. 13. *Jac B. R. Woodhouſe v. Futter* [1. Rol. Rep. 187.]. If a man covenant by indenture to make a feoffment of the value of fifty marks, if he afterwards make a feoffment to the uſe of the indenture generally, and does not particularly aſſign the land, more ſhall not paſs than the place itſelf where the livery was made; by COOKE and DODDERIDGE.

† Orig. *tout.*

field,

1. And. 11. Mo. 81. [Bendl. 148.] S. C. [Bac. Ab. Election, A.]

Whetly, 2. Co. 36. a. For where two things are given nothing paſſes before election 1. Ro. Ab. 829. 1. Co. 155. b. Eaſt. 7. El Co. Lit. 77. b. 2. Ro. Ab 11. Hob. 174. 244. 2. Co. 36. 7 El 254, a. 5. Co. 124. b.

field, who had a leaſe of the entire manor of *Sunning* for the term of ninety-nine years, confirmed by the Dean and Chapter: and he diſtrained *Bullock*'s carts and billets in ſeventeen acres called *Pulters Hill*, parcel of the ſaid great wood, where *Bullock*, as heir in the fifth deſcent from the ſaid *R. B.* made his election, and cut there the wood growing &c. And note, that the feoffment above was pleaded without deed; and alſo no certainty alleged at what time the feoffment was made: and alſo there is alleged a dying ſeiſed of the ſaid meſſuage, and of ſeventeen acres of wood in the firſt grantee, *ſ. to have the election to his heirs &c.* (18 And in the Term of *Eaſter*, in the 12th year of the preſent Queen, the caſe was argued at the Bench; and HARPER, *Juſtice*, argued for *Bullock* the plaintiff, whoſe Counſel he was before he was made a Judge, and defended the pleadings, in which many defects were aſſigned at the bar, and afterwards at the bench. Alſo, *ſ.* 1ſt, That no certain eſtate is alleged in the Biſhop of the ancient meſſuage, nor any town or place where it lies. Alſo that, by virtue of a feoffment of the meſſuage, and ſeventeen acres of wood, the aforeſaid *R. B.* the feoffee was ſeiſed thereof in his demeſne as of fee, and this before the election. Note this. Alſo the traverſe is, Without this, that the ſaid ſeventeen acres of wood were parcel of the manor at the time of the taking and before ſince the election: and by the feoffment above it was ſevered from the manor, and made in groſs if it be a good feoffment. And for the matter in law he argued that the feoffment and the election were good and ſufficient without deed, and that the feoffee was tenant in common immediately with the Biſhop in the reſidue of *Berewood*, having regard to the quantity of ſeventeen acres. But WELSH, WESTON, and DYER, *contrà totis viribus* to the tenancy in common. (19) And DYER held that the election could not be annexed to the eſtate of inheritance or freehold, without deed, any more than a condition, covenant, aſſent, licenſe, or liberty; becauſe election is the internal, free, and ſpontaneous ſeparation of one thing from another without compulſion, conſiſting in the mind and will. But they three held the election void in this caſe, becauſe by the livery in deed or in law, the freehold and property of the ſoil of the ſeventeen acres of wood paſſed without any interval of time from the feoffor to

3. Cro. 828.

5. Co. 24. b. but that was only a perſonal thing, and not real. 42. E. 3. 23. 2. Co. 37. b. Palm. 438. 21. H. 7. 28 b. Lit. 85.

1. Ro. Rep. 287. 7. H. 6. 11. a.

the

the feoffee. And *Bracton* ſays, that the donor never ceaſes to poſſeſs till the donee begins to poſſeſs. But they held the feoffment of the ſeventeen acres void, on account of the uncertainty of their ſituation in *Berewood*, s. towards the South or towards the Eaſt *, &c. (20) See a like caſe, 44. Aſſ. [pl. 11.] of the fourth part of a manor towards the Eaſt, &c. Alſo no view could be had of the ſeventeen acres in certain here, ſo that a certain thing could be brought into judgment. And to make a ſuſpenſion of the freehold and property in the ſeventeen acres until election be made is impertinent, becauſe they are things of ſo great weight, that &c. Alſo the election ſhould be made and executed in the life-time of the parties, or not at all, as in 9. *E.* 4. [38. a. pl. 17.] of the exchange of an advowſon appendant for one of the two chambers in a college in *C.* But they held the election here void, if it paſſes immediately by the livery: and if the election of the heir ſhould be good, that ought to precede the intereſt and property of the ſeventeen acres in the feoffee. And many diverſities put of elections to have property in chattels, and in things real and executory: and ſo they the three laſt Juſtices argued againſt *Bullock* the plaintiff, and in the ſame Term judgment was given againſt *Bullock*.

21. H. 7. Cro. 84. Co. Lit. fo. 4, 5. a b. 20. H. 7. 8. b. Dy. 372. Perk. 17. a. 1. E. 3. 2. 2. Ro. Ab. 11. 2. Co. 36. Dy. 71. a. 190. b. Hob. 174. 1. Leon. 254. Perk. 284. 14. H. 8. 20. a.

[2. Bl. Com. 107. 2. Com. Dig. 82.]

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(21) MEADE, *Serjeant*, moved this caſe at the bar: A man made a leaſe for years by indenture of a meſſuage and divers lands, with this clauſe in it, s. that if it happen the leſſee *to do* any waſte in and upon the premiſes, it ſhall be lawful for the leſſor to re-enter &c. The leſſee *ſuffered* the houſe to fall in for want of covering and repairs. Whether the leſſor for this matter of negligent and permiſſive waſte (which does not conſiſt in feaſance according to the words of the condition, which ſhall be taken ſtrictly, and moſt ſtrong againſt the leſſor) may re-enter or not? And WELSH and DYER thought *primâ facie* that he might, for

Leaſe conditioned that leſſee ſhall not do any waſte; ſuffering the houſe to go to ruins is waſte within the ſtatute, and a breach of the condition.

11. Co. 78. 42. E. 3. 25. 45. E. 3. 17. Dy. 45. and 47. b. 9. H. 6. 35. a. 1. Rol. Ab. 428. 1. Co. 76. Dy. 255. Noy. 51.

[Shep. Touch. 142.]

(21) *Hil.* 28. *Eliz. Tiebborne v. Hutchmaurs* [Ow. 43.]. Aſſignment of waſte by doing waſte in not ſcowering ditches, diſallowed, and yet the writ was, "he did it in the ground-ſell, by not ſcowering the ditches.

ſuch

Stat. Gloſt. c. 5. 17. E. 4. 2. Dr. Stu. 63. Plo. 87. 12. E. 4. 5. 6. Br. Conditions, 40. accord. 33. Aſſ. 1. 2. Inſt. 145. [See Co. Lit. 53. a.]

ſuch waſte is puniſhable by the ſtatute of *Gloucester* [Marleberge, c. 23.], the words of which are, "*Voſtum vendit' ſeu* "*deſtruction' facere de terris domibus &c.*" Alſo this word (any waſte) is general, and indifferent to either of the two kinds of waſte, *s.* voluntary or negligent, &c. wherefore &c. *quære.*

Hilary

Hilary Term,

11. Queen Elizabeth.

(22) IF a man, being out of the realm, write books againſt the Queen's ſupremacy, and thereby attribute juriſdiction to the ſee of *Rome*, to be kept and uſed within this kingdom; and the ſaid books are brought into this kingdom by ſuch of the Queen's ſubjects as know the effect thereof, * and they are by them ſecretly uttered and ſold to divers perſons, knowing alſo by report the ſaid books to contain matter extolling the ſaid uſurped authority: and afterwards they to whom theſe books are delivered read the ſaid books ſecretly to themſelves, to the intent thereby to be the better enabled to ſupport that opinion, but have no ſort of conference with any others about it; Whether they who brought theſe books, and they who read them, have offended againſt the ſtatute of the 5th year of the preſent Queen, [c. 1.] or not? The reſolution of ALL the JUSTICES of both the Benches (the CHIEF BARON being preſent alſo), upon the firſt point, (three of them excepted) was, That they who brought them, and they who delivered them as above, are offenders by the words "*hold and ſtand with, to ſet forth*" &c. but upon the ſecond, *ſ.* the receivers and readers only of theſe books, and who have not further acted or attributed by conference and allowance &c. ALL, excepting two, held this no offence. Alſo, if a man get any ſuch book as above into his hands, and afterwards read and confer upon it with any other perſon, and in his conference by any ſpeech or words allow this book to be good as above, reſolved by ALL clearly to be within the danger of the law above, by attributing. (23) Alſo if a man, hearing of the contents of this book by report

If a man import books written againſt the ſupremacy, and utter them, he is within the danger of 5. El. c. 1. but the receivers and readers not conferring of it and approving, are not. But they who read, and in conference with others allow it; and who hearing their contents affirm them to be good; and they who ſecretly convey them to their friends to perſuade them to ſuch tenets. And printers and utterers of ſuch books within the realm; and they who ſend out books of this ſort written within the realm as books written abroad, which are bought, read, and conferred on, are all within the ſtatute. [Jenk. cent. 6. c. 12. S. C.]

R. Crown. 8. Vide Coke's preface to 7th report. 1. Hale's P.C. 332. 9. Co. 59. b. Raſt. Crown. fo. 94. 2. Kebl. 502.

(22) *Raſt.* 10. *Ed.* 1. Rot. 28. To † annul judgment, writings of the Pope are cited, brought in by letter-carriers unknown; and it is ſaid attachment lies againſt him who cites them, in *Præmunire*, as violating the royal dignity.

† Orig. *Ad judicium adnulland!*

from

from [illegible]thers, by any overt ſpeech commend or affirm it to be [illegible]od; or if a man, having this book in his cuſtody, (and knowing the contents thereof) convey it ſecretly to his friend, to the intent that he ſhould read it, and thereby perſuade himſelf to be of that opinion touching the ſupremacy—*quære* of him as above? And it was reſolved, that both are within the danger &c. eſpecially the former. (24) Alſo if a man print any of theſe books within the kingdom, and utter them, he was reſolved by ALL clearly to be within the danger &c. (25) Alſo, if any of theſe books be made and written within the realm, and afterwards ſent out as things compoſed out of the kingdom, and theſe are bought, read, and conferred upon as above, reſolved by ALL to be within the danger. And theſe reſolutions were made at *Serjeants Inn, Fleet-ſtreet*, on the 9th of *February* in this Term.

* Eaſter Term,

11. Queen Elizabeth.

The Archbiſhop of Dublin *againſt* Bruerton.

If a biſhop have two chapters, and he make a leaſe, both muſt confirm, or the ſucceſſor may avoid it; but if one be diſſolved, then the confirmation of the other ſufficeth.

A Dean and Chapter may ſurrender to the King without the conſent of the Biſhop, and the corporation will be diſſolved thereby.

[Jenk. cent. 6. c. 11. S. C.]

(26) THE Deans and Chapters of *Chriſt Church* and *Saint Patrick* were time out of mind, the ſee of the Archbiſhop of *Dublin*, and uſed by their ſeveral deeds and ſeals to confirm the leaſes of the Biſhops &c. and ſtill *Chriſt Church* is known to be the oldeſt Chapter of the ſee. The Dean and Chapter of *Saint Patrick*, by their chapter ſeal, give and ſurrender to the King and his heirs and ſucceſſors, all their ſaid church, houſes, lands, and poſſeſſions, without the licenſe, will, or conſent of their Biſhop, being their chief Ordinary, and Patron of the moſt part of all the prebends: after which

(26) 31 E. *Eliz.* † *Good's* caſe. The corporation of the mayor, bailiffs, and burgeſſes of *Windſor*, made a leaſe for years, one bailiff only aſſented, and it is a void leaſe, if there were two bailiffs. And it was agreed there, That if the greater part of the burgeſſes aſſent, it is good, and not neceſſary that all be preſent at the ſealing, if their aſſent be had before.

ſurrender

ſurrender the church was uſed as the common hall for the four ordinary courts there in their Terms, until the new building thereof made in the time of Queen *Mary*; and between the ſurrender and the new erection a leaſe made by the Biſhop was confirmed only by the Dean and Chapter of *Chriſt Church*. Whether the ſucceſſor of the Biſhop ſhall be bound by this leaſe or not, the Judges in *Ireland* were of divers opinions, but the greater part thought that it ſhould bind the Biſhop. (27) See the caſe of the Biſhop of *Coventry* and *Litchfield* in tit. *Grant* [104.] in *Fitzh.* in the time of *R.* 2. but more truly reported in *Statham*, tit. *Aſſiſe*, & *H.* 50. *E.* 3. but it is not found in this Term in the printed book of this year, † *nor* in *Lib. Aſſiſarum*. But there one Chapter alone confirmed the grant of the Biſhop, and therefore it was not good after the death of the Biſhop who granted &c.

Co. Lit. 301. a. Noy 94. 1 Ro. Ab. 477. 2. Ro. Rep. 98. Jo. 168. Pal. 462, 493. 9. H. 6. 33. b. 3. Mar. 123 b. 36. H. 8. 7. Dy. 58, 239. a. 273. [Wats. Cler. Law 474. 3. Bac. Ab. 379.]

Graunts 104. Plow. 104. 50. E. 3. Stath. Aſſiſe 17. E. 3, 29.

(*a*) But in the caſe above, there was not any chapter *in eſſe* at the time of the confirmation of the demiſe of the aforeſaid Archbiſhop, except *Chriſt Church* alone, becauſe the Corporation and Chapter of *Saint Patrick* aforeſaid, by the gift and ſurrender of the Dean and Chapter aforeſaid, was legally diſſolved and determined, even without the conſent of the Archbiſhop; and this by the opinions and reſolutions of CATLYN, DYER, SAUNDERS, WELSHE, and CARUS Juſtices, in this Term. And ſo it was certified to *Henry Sidney*, Knight, the Lord Deputy of *Ireland*, by letters under the hands of the ſaid five Juſtices,

8. H. 5. 10. [Vide 1 Leon. 234. And Ld Treby's argument in the London quo warrante caſe p. 10, 11. and the poſtſcript throughout. See 2. Term Rep. 532 and a proteſt on the 23d of Jan. 1689, in the Lords Journals, vol. 14. p. 424.]

(27) In the time of *Eliz.* [2. D'Anv. Ab. 217. pl. 1.] between *Manwood* the Chief Baron and *Lovlace*, the Corporation of *St. Stephen* in *Canterbury* was founded by the name of the Brother and Siſters; and all the ſiſters were dead, and the brothers made a leaſe, and it was holden void; for then it was no corporation.

† Orig. *nunc*.

(*a*) In my copy of the Edit. of 1621, there is a MS. note, that "*all this laſt was* not in the original manuſcript of DYER." It is however in the old edit. of 1592, and in that of 1585.

Entered Trin. 10 El. rot. 1031. but no judgment given there.

Stephens *against* Wall and another.

A present avoidance of a church is a chose in action, and cannot be granted by a subject, though it may by the crown.

Benlose 192. [Ben in Ash. p. 20. Jenk. c. 6. c. 15. 1. And. 13. Benl. in Keil. 212. Mo. 89. } S. C.

*[283. a.]

Dy. 26, 127, 129. Winch 97. Co. Lit. 378. b. Perk. 331, 332.

(28) THE Patron of a church (the church being void) granted by deed under this form, *s.* "I have "given and granted to *A. B.* the first and next presenta- "tion and advowson of the church of *C.* and the right "of presenting to the same, now vacant, so that it shall "be * lawful for the said grantee to nominate and pre- "sent a fit person for the said church to the ordinary of "the place for this one turn only." And afterwards the six months passed by negligence, wherefore the ordinary collated by lapse, and afterwards the church became void again. Whether the grantee shall present to the church, or it appertain to the grantor and his assigns, was the question. And if a *quare impedit* be brought against two, one of whom is clerk, and is so called in the writ, and is also incumbent, and one plead as patron making title to the advowson, and that he presented the other, who was received at his presentation: and the incumbent plead the same plea in bar, but he concludes the end of his plea with, "*and so he saith that he is parson* "*imparsonee*" &c. (whereas the better form, and the usual by all the Judges, is to make this matter the commencement of his plea, and to enable himself as possessor of the church, to have the plea in bar); *quære* well, if upon demurrer by the plaintiff to this plea, the plea shall be holden ill &c.

1. Ro. Rep. 452. Dy. 70, 293, 294. 7. Co. 26.

1. Leon. 167. 9. E. 4, 47. 11. H. 4. 54. 28. H. 8. 26. a.

[Wats. Cler. Law 88, 89. Gibs Cod. 758. 3. Bur. 1510, 1512. 2. Wils. 80. 196. but see 2. Black. 1054]

(29) And in *Easter* Term in the twelfth year of the present Queen, the case was argued in substance at the Bar and at the Bench; and by HARPER, WESTON, and DYER holden, That the grant of the present avoidance is void, because it is a mere personal thing annexed to the person of him who was patron in expectancy at the time of the vacancy; and also a thing in right, power, and

(28) *Lincolne* and *Brooksbey*'s case, [3. Cro. 173. Ow. 85. 1. And. 22[illegible]. 1. Leon. 167. Golds. 112] *C. B. H.* 32. *Eliz.* adjudged, in arrest of judgment, that if a presentation be granted to two, and afterwards the church becomes void, and one of the grantees releases to the other, that this release is void, because there is no interest in him to whom the release is made; and by WALMESLY when the church becomes void, now they have not the patronage; but the right of presenting one who shall be promoted to the benefice, which cannot be granted over by release. But if the church had not been void, then the patronage had remained in them, agreed by all against 1. Inst. 270. b.

authority,

authority, and alſo a *choſe in action*, and in effect the fruit and execution of the advowſon, and not any advowſon; and yet executors ſhall have it by privity of law. And to this opinion afterwards CATLYN, Chief Juſtice, CARUS and SOUTHCOT Juſtices, agreed; but WELSH *e contra*, and to his opinion SAUNDERS, Chief Baron, and WHIDDON Juſtice, afterwards aſſented. But all agreed that the Queen might make ſuch a grant, although it be a *choſe in action*, according to 9. *E.* 3. [25. b. 26. a.] and 16. *H.* 7. [7. b. pl. 11.] in the caſe of *Margaret* Counteſs of *Richmond*, which is entered *H.* 9. *H.* 7. rot. 250.

Fulb. Paral. lib. 1. fol. 11. N. B. 133. c. Fit. 33. p. 21. H. 7. 21 a. Dier 130 a. Co. Lit. 170. 12. H. 7. Cro. 12. Qua. Imp. 31. Stamf. 44. 10 Eliz 269. a. 2. H. 7. 8. 5 H. 5. 3. 13. Eliz. 300. a. 18. 21. 348. a. 13. 16. H. 7 14. 7. b. Ante 1. pl. 7. & 30. pl. 208. Mo. 204.

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(30) A Queſtion was moved by GERRARDE Attorney-General: If a *ceſtuy que uſe* before the ſtat. 27. *H.* 8. [c. 10.] of three acres of land in divers vills lying apart within one county, by ſeveral feoffments, make a feoffment of all the three acres by deed and letter of attorney, and the attorney make livery in one acre in the name of all the three acres, Whether that be good for the other two acres? And he ſaid many were of opinion that it was not, becauſe the ſtatute of [1.] *R.* 3. [c. 1.] gave authority to *ceſtuy que uſe* to enter and make a feoffment, which he ought to do in his proper perſon † *and not* by attorney for him. But the caſe above was ruled upon demurrer in law to the evidence in treſpaſs, *M.* 25. *H.* 8. *Rot.* 71. in *B. R. cor'* * *Fitz James* &c. [*Bendl.* 12. pl. 10. *Benl.* in *Keilw.* 207. a. 1. *And.* 28. pl. 66. 1. *Leon.* 265.] that the feoffment was good for all three, upon great debate, and it was between the Biſhop of *London* and others, and *Kellet*. But *quære* if the feoffor had been ſeiſed in his demeſne as of fee of the acre where livery was made, whether the other two acres ſhould paſs, or not?

Ceſtuy que uſe of three acres by ſeveral feoffments in one county, made a feoffment of all, and livery in one alone, all paſſes under 1 *R.* 3. c. 1.

Co 9. 75. b. 10. El. 274. that he could not ſuffer a recovery before ſtat. 27. H. 8. 9. H. 7. 26 a. B. N. C. 307. 16. El. 337. b. Dy. 58. Perk. 227. Br. Feoffments al Uſes 28.

[Co. Lit. 50. a. note (1) 2. Bl. Com. 315.]

25. H. 8. Ben. pl. 2. 1. Ro. Ab. 330. Roll. contin. 323, 324, 394.

9. Co. 75. 37. H. 8. Br. Feoffments al Uſes 55. 33. H. 8. 28. 28. H. 8. 18. Br. Feoffments 77.

* [283. b.]

† The old edit. of 1585, and 1592. have *ou*, but the later editions ſeem properly to have altered it to *et nemy*.

King

King *againſt* Boys and another.

If *A.* enfeoff an alien, and another to his uſe, upon office found the crown ſhall have the alien's moiety to its own uſe, and the other uſe is gone for ever.

1. Leon. 57. Kel. 103. Stam. prerog. 18. 53. 7. E. 4. 30 b. 3. Mar. 124. a. 6. H. 8. 2. b. 9. H. 4. 8. a. Co. 1. 122 a. Co. 7. 25. a. Plow. 482. b. Co Lit. 2. a. 86. a. B. N. C. 433. 11. H. 4. 26. b. Mo. 390. Gould. 29. 2. Sid. 148. [1. Bac. Ab. 81. 1. Com. Dig. 301. Co. Lit. 180. b. note (2.)]

(31) ONE *T. King* enfeoffed one *Jaſper Boys*, an alien, and *Forcet* of *Gray's Inn*, to the uſe of himſelf and his wife in tail, remainder to his right heirs. Whether the Queen be entitled to a moiety of the land immediately, or not, was the queſtion. And it ſeems, that if an office be found of it, the Queen ſhall have the moiety by her prerogative to her own uſe, and the other uſe in this moiety is gone for ever.

(31) 5. Co. 52. Inſt. 186. a. The wife of feoffee to an uſe ſhall not be endowed, becauſe he has ſeiſin only for an inſtant. 2. Co. 77. a. Lord *Cromwell*'s caſe. [See the books in the margin of Cro. Jac. 615. 4th edit.]

Mich. 10. 11. El. Rot. 1751.

Aſſiſe muſt be brought in the county where the land lies, and being tried in a foreign county, tho' by aſſent of parties, is error.

In aſſiſe—Plea, a ſeiſin of the plaintiff preſcribed in as villein regardant; the iſſue ſhould be, frank, or not; and not the ſeiſin be traverſed.

Where iſſue is joined on ſpecial matter, the jury may not find a ſpecial verdict.

Bend [in Keil. 212.] pl. 19. An. Ben. 40. Mo. 90. Co. Ent. 60. [Bend. 189] 1. And. 14. Dy. 266. pl. 11. } S. C.

Fleyer *againſt* Crouch.

(32) *BUTLER* entered upon *Crouch* into land in the county of *Somerſet*, as into the purchaſe of his villein regardant to his manor of *B.* in the county of *Glouceſter*; and made thereof a leaſe for life to *Fleyer*, who was diſſeiſed by *Crouch*, and brought an aſſiſe in the county of *Somerſet* againſt *Crouch*, who pleaded in bar, and the other made title to the land for the cauſe above; and iſſue was tendered and traverſed by a *ſans ceo*, *ſ.* that *Butler* and his anceſtor, and all thoſe whoſe eſtate he hath in the manor of *Badminton*, in the county of *Glouceſter*, have been ſeiſed of *Crouch* and his anceſtors as of villeins regardant to the ſame manor, from time whereof memory &c. and this, as well the plaintiff as the defendant, pray may be enquired of by the aſſiſe &c. And yet for the trial of this plea the aſſiſe was removed into Bank, and from thence proceſs iſſued to the Sheriff of the county of *Glouceſter*. And the Jury came from thence, who, on account of the difficulties and variety in the opinions of the Juſtices, gave a ſpecial verdict in this manner; *ſ.* That the ſaid *Butler* and his anceſtors &c. were ſeiſed of the ſaid manor from time whereof memory &c. And that the anceſtors of *Butler* were ſeiſed during all that time of the anceſtors of *Crouch*, as of villeins regardant &c. until

until the 1ſt year of *H.* 7. and that *Crouch* was a villein regardant to the ſaid manor, and that no other ſeiſin of *Crouch* or his anceſtors was had ſince: but whether the ſaid ſeiſin of the manor aforeſaid, to which &c. be in law a ſeiſin of the aforeſaid *Crouch* and his anceſtors from the aforeſaid 1ſt year of *Hen.* 7. until the writ of aſſiſe above, they pray the advice and diſcretion of the Court &c. And if it be adjudged in law a ſeiſin, then they find * the iſſue in full for the demandant &c. but if otherwiſe &c. then for the tenant &c. And note this trial by men of the county of *Glouceſter* where the iſſue was joined upon the aſſiſe in the county of *Somerſet* at the prayer of both parties. (32) And *in favorem libertatis* by *M.* 40. *E.* 3. [36. a. pl. 6.] in treſpaſs the trial was in the county where the treſpaſs was brought, and not in the foreign county, where the plaintiff was averred to be a villein regardant, and ſo it was agreed 44. *E.* 3. [6. b.] if it had not been otherwiſe by conſent of parties. See a like caſe of foreign trial, and *e contra* in aſſiſe, 14. *H.* 4. 4. [9. b. pl. 7.] where the trial was prayed to be by aſſiſe, by both parties. And afterwards in *Trin.* Term, 12. it was reſolved by the opinion of ALL the JUSTICES of the BENCH in my chambers, without open argument, that the plaintiff ſhall not recover upon this verdict; and this for four reaſons: 1ſt, The trial by the foreign jury is bad and erroneous, and a default of the Court and Juſtices of aſſiſe. 2dly, Becauſe upon this † ſpecial iſſue, which is by a traverſe by an *abſque hoc*, and not a general iſſue, a preciſe verdict ought to be given for the one ſide or the other. 3dly, Becauſe no actual or full ſeiſin in *Butler* and his anceſtors, of *Crouch* and his anceſtors, as villeins regardant, is found, but only a ſeiſin in law; and it ſignifies not, although the jury here had given a verdict upon the right of villenage, upon which a good iſſue might have been taken; and by all the precedents where villenage is objected, although he hath alleged alſo a ſeiſin of the perſon of the villein and his anceſtors, yet the iſſue is joined upon the right of villenage, *s.* frank and free of eſtate, and not villein *prout* &c. which here is not ſo &c. The

Lit. 193. 22. H. 6. 32. 12. H. 6. 5. a. 19. H. 6. 18. b. 7. E. 3. 30. b. 38. E. 3. 34. 43. E. 3. 31. 39. H. 6. 29. b. 29. H. 8. 39. b. 47. E. 3. 26. 27. 9. H. 5. 1. a. 35. H. 6. 12.

See Pal. 100. 2. Inſt. 124. b.

Dy. 114. 278. Plow. 92, 93. 9. H. 7. 3. Inſt. 306. b.

[Bac. Ab. Verdict D.] 5. Com. Dig. 157. Co. Lit. 226, 227.]

Dy. 48. 278. b. 13. E. 4. 24. 35. H. 6. 22. p. H. 5. 1.

[Noy. 27.]

† *Trin.* 32. *Eliz. C. B. Famon* and *Wenſted's* caſe, [Savil. 121. Cro. Eliz 209. 2. And 232. 2. Leon. 305.] adjudged that a ſpecial iſſue is good. 9. Co. 12. [14. b.] according.

Inſt. 114. b. 2. Inſt. 653. Noy 67. 3. Cro. 594.

4th, Becauſe the preſcription fails in part, *s.* in *Butler* himſelf who is a party, and all his anceſtors ſince the 1ſt year of *H.* 7. Wherefore &c.

Damages in dower ſhall only be when the huſband dies ſeiſed
Dr. St. 81. Yelv. 112. 21. H. 6. 44. Mo. 69. 9. H. 5. 62. 14. H. 8. 25. 10. Co. 110. Co. Lit. 32. b. Ro. Rep. 161.
[Booth real act. 168. 2. Bac. Ab. 249.]

(33) NOTE, The common practice is, and the precedents of the Common Pleas are, that a woman demandant in dower ſhall not recover any damages, unleſs the huſband died ſeiſed; and this by the ſtatute of *Merton*, c. 1, *That they ſhall have of the tenements whereof their huſbands died ſeiſed* &c.

Grey's Caſe.

Trial by the panel returned on a *venire facias cum proviſo*, on which the plaintiff ſued an *habeas corpora juratorum*, when the firſt *venire facias* was alſo returned, is aided by the ſtatute of Jeofails.
Dy. 215, 217. a. Raſ. Repleder. 5. Co. 36. Dy. 188, 367.
[3. Bac Ab. 246. and ſee 1. Cromp Pr. 219]

(34) *MEMORANDUM*, That a *venire facias* was awarded in *Trinity* Term laſt, returnable *Menſe Michaelis*, at which time and day no *venire facias* was returned, wherefore the defendant ſued a *venire facias cum proviſo*, returnable *octab. Hil.* and in the mean time the firſt *venire facias* was returned on the file of *Michaelmas* Term with a *poſt diem*. And notwithſtanding this, the ſecond *venire facias* was returned in *Hilary* Term, ſerved: and afterwards upon this ſecond panel the plaintiff ſued out an *habeas corpora juratorum*; upon which the jury appeared and
* [284. b.] * found the iſſue for the plaintiff, whereupon now he prayed judgment. And Whether he ſhall have it by the ſtatute of *Jeofails*, 32. *H.* 8. [c. 30.] although the trial by the ſecond panel be erroneous by the common law where it ought to have been by the firſt panel, was moved in arreſt of judgment: and the ſtatute being well conſidered in the point of miſconveying of proceſs, judgment was given for *Grey*. See *Hil.* † 19. fol.—.

In attaint in *C. B.* after oyer of the original record and iſſue joined it is removed by error into *B. R.*—ſtill the Court of *C. B.* may proceed in the attaint.
Dy. 111. 5. H. 7. 22. 13. E. 4. 4. B. Attaint 31. Dy 291. 10 H. 6. 6. Br. Error. 136. Antea 275 a
[F. N. B. 246. note (d) 3. Bac. Ab. 281. note (a.)]

(35) IN attaint the parties and petit jury appeared, and the defendants demanded *oyer* of the writ &c. and alſo of the record upon which the writ of attaint iſſued; and they had it *in hæc verba*, for the record and verdict were in the ſame Court of the Bench. And upon this the plaintiff aſſigned the falſe oath; and the defendants pleaded that they made a good and lawful oath; upon which they were now at iſſue in this Term. And afterwards the firſt record was removed this Term into the Queen's

Queen's Bench by writ of error, and there ſtill remains undetermined. Whether the proceſs againſt the Grand Jury and the parties ſhall be ſtayed for this matter, becauſe the original record does not remain in the Common Bench, or not, was much doubted. But it ſeems the Court may well enough proceed &c.

Trinity Term,

11. Queen Elizabeth.

In Cur' Ward.

(36) *A. B.* being ſeiſed of two manors, one in poſſeſſion and the other in reverſion upon an extent, died in the ſecond year of the preſent Queen; after whoſe death an office was found of the manor in poſſeſſion, and that it was holden of a ſubject in ſocage, and nothing found of the manor in extent. The heir being of full age, took the profits of the manor in poſſeſſion for the ſpace of a year, and then ſold both to ſtrangers, who have taken the profits of the manor in poſſeſſion to this time. And in the eleventh year of the preſent Queen, a new office is found, by which the manor in extent was found to be holden of the Queen by Knight-ſervice *in capite*, and the ſeiſin and the dying of the ſaid *A. B.* ſeiſed thereof. Whether the omitting of the manor held *in capite* in the firſt office, and the entry and pernancy of the profits of the other until this time, be an intruſion before the laſt office found or not; and if it is, Whether it be pardoned by the * general pardon of the fifth year of the preſent Queen. And Whether the ſuing out of the livery be alſo gone by the ſame pardon, no tender thereof being made before the pardon. And if the ſuing out of the livery be not gone, then Whether the intruſion be pardoned by the general pardon of the eighth year of the preſent Queen. And it ſeemed clearly that for the ſocage manor the pardon diſcharges the entry, or intruſion and livery; and for the other the Counſel of the Court were in ſome doubt; but by the better opinion, that was diſcharged alſo by the pardons &c.

A general pardon which diſcharges *all intruſions and ſuings of liveries*, extends to thoſe whereof office is not found at the time of the pardon.

3. H. 7. 3. 5. E. 4 4. 16. E. 4. 1. Davis 3. B. N. C. 130, 140. 13. Jac. Cro. 390. Dy. 213. 2 Leon. 223. Dy. 113.

[* 285. a.]

Dy. 289. Keilway 88. b. 198. b. 16. E. 4. 5. Stam. 40. 16. E. 4. 1. b. 13 H. 4. 4. b.

[See ante 249. a. pl. 83.]

Lord Beauchamps *againſt* Sir Richard Croft and others.

An action of *ſcandalum magnatum* will not lie for bringing a writ of forger of falſe deeds againſt a peer, more eſpecially whilſt that writ is pending.

[Keilw. 26. pl. 1. S. C.] 13. H. 7. Br. 26, 27, 28. 3. Inſt. 172. Roll. contin. 199. W. 2. c. 33. 2. R. 2. c. 5. 27. H 8. 2. 1. H. 7. 1.

(37) *MEMORANDUM*, That in *Michaelmas* Term, in the 13th year of *Henry* 7. in an action of *ſcandalum magnatum*, brought by the Lord *B.* againſt Sir *Richard C.* and others in *C. B.* the caſe was, that the ſaid Sir *Richard* had ſued a writ of forger of falſe deeds againſt the ſaid Lord *B.* pending which writ undetermined, nor tried, the ſaid Lord *B.* for the ſlander of the ſaid forgery by the ſaid ſuit, brought his ſaid action of *ſcandalum magnatum*, ſuppoſing the ſlander on the 12th day of *March*, in the twelfth year of *Hen.* 7. And the defendant juſtified the ſaid ſlander by the uſer of the ſaid writ, which was commenced before, *i.* on ſuch a day in the eleventh year of the King &c. with a concluſion in his plea, "*which is the ſaid ſlander*" &c.; And by the better opinion on demurrer to the plea, the matter of juſtification is good, and out of the intention of the law, and ſtatutes for ſlander &c., for no puniſhment was ever appointed for a ſuit in law, however it be falſe, and for vexation. And in the caſe above, it is indifferent to ſay that it is falſe or true, as long as the ſuit is pending and undetermined, Wherefore &c.

2. R. 3. 9. b. 21. E. 4. 22. b.

[See Harg. Co. Lit. 161. a. note 4. Doug. 215. 2. Term Rep. 225. 4. Term Rep. 247.]

(37) 4. Co. [14. b.] *Buckly* v. *Wood*. Where *Wood* had exhibited a ſlanderous bill againſt *Buckly* in the ſtar chamber, and afterwards publiſhed it in another place, the action did lie. But *Eaſt.* 28. *Eliz.* the ſaid judgment was reverſed for error in the exchequer-chamber. *Trin.* 21. *Eliz.* rot. 561. Between *Bowes* and *Sands* [Cro. Eliz. 231, 248. 2. And. 29.] *Mich.* 10. Jac. † *Herſie* v. Sir *Anthony Brown* in the ſtar-chamber.

An indictment for an aſſault upon *John*, without adding the ſirname is good; and if the defendant be indicted again, with the ſirname added, he may plead the former verdict, and aver it to be the ſame perſon.

12. H. 7. Keil. 25. S. C.

12. E. 4. 13. 27. H. 6. 3. b. Bridg. 132. Cromp. 88. b. Stamp. 95.

(38) *MEM.* That in *Trin.* Term, in the twelfth year of *H.* 7. in *B. R.* a man was indicted for a treſpaſs, aſſault, and battery upon one *John*, pariſh-prieſt of *D.* in the county of *C.* without any ſirname of the prieſt. And an exception taken to it by SEGEWICK for the uncertainty; and alſo for that the party might be puniſhed twice for the ſame treſpaſs, if hereafter he be indicted afreſh, and the entire name of the prieſt put into the indictment, wherefore &c. But FINEUX and REDE thought the indictment good, and the

the name of the prieſt not material; for if it had been, upon a certain perſon unknown, it had been well enough, as of robbery or murder committed on a perſon unknown. And if he be hereafter indicted for the ſame treſpaſs or felony, wherein the true name of the party unknown is comprized, yet he may aid himſelf by an averment that they were one and the ſame treſpaſs or felony, and not divers, although they were ſuppoſed at divers times.

[2. H. H. P. C. 181. 2Hawk.P.C.330,331.]

[Videante 99. a. pl. 61.]

22. Aſſ. 94. 9. H. 6. 45. 9. E. 4. 1. b. 8. H. 5. 5. a. Plowd. 85. 129.

* Duke of Buckingham's Caſe. * [285. b.]

(39) *HUMPHRY de Bohun*, late Earl of *Hereford* and *Eſſex*, held the manors of *Harleſfield*, *Newnam*, and *Whytenhurſt*, in the county of *Glouceſter*, of the King by the ſervice of being Conſtable of *England*, and had iſſue two daughters, and died ſeiſed; they entered and took two huſbands; and the huſband of the youngeſt is afterwards made King; and partition is made, and the King and his wife chooſe the manor of *W.* for their part; and the two others are allotted to the other huſband and wife. And now there are three queſtions. The firſt, Whether the reſervation of the tenure at the commencement by the King was good? and by the opinion of ALL the JUDGES of *England*, it is good enough. The ſecond, How the daughters before marriage could exerciſe the office? and to this it was clearly reſolved, that they might make their ſufficient deputy to do it for them, and after marriage the huſband of the eldeſt may alone. The third, more difficult; *s.* Whether by unity of the parcel of the tenancy in the King, the office be determined, or ſhall have its being and continuance in the other coparcener? And reſolved alſo clearly by the aforeſaid JUSTICES, that it ſhall have its continuance in the other; for otherwiſe, they would have the two manors without doing any ſervice for them: and they are compellable at the pleaſure of the King to exerciſe the office; and the King may refuſe it at his election and pleaſure as well as the common lord may refuſe the receipt of homage of his tenant (unleſs it be homage aunceſtrel.) And the tenure above

If a man hold manors of the King by ſervice of being Conſtable of *England*, it is a good tenure in grand ſerjeantry. If he die, leaving only two daughters, while ſole they may exerciſe it by deputy, and after the marriage of the eldeſt, her huſband alone may exerciſe it, and the youngeſt after marrying, and the crown devolving upon her huſband, who makes partition, ſtill the huſband of the eldeſt muſt do the entire ſervice; but the King may refuſe the ſervices at his pleaſure.

Keilw. 170, 171. S. C. Jenk. cent. 6. c. 14. S. C.

[See Co. Lit. Harg. Edit. 165. and note 8. there. 4. Inſt. 127. 2. Term Rep. 397.]

Co. Lit. 106, 149. 11. H. 7. 12. Coke 6. 2. a. 74. Tho. de Woodſtocke Dux Glouc. et Eleanor ſa feme. V. N. B. 9. b. 11. E. 4. 1. F. Nat. 5. b.

Co. Lit. 233. b. 8. Co. 74. 1. E. 3. Avowry 168. Per. 26. pl. 656. Lit. 34. b. 151, 153. a. 11. H. 7. 3. a. 7. H. 6. 3. a. 9. Aſſ. 22. 24. Aſſ. 151

was holden to be grand ſerjeantry (a). And if the father hold of one of his two daughters, and die ſeiſed, they enter and make partition, the ſervice is revived for the whole, if it be entire, as homage &c. And theſe reſolutions were by the Chief Juſtices reported to the King himſelf at *Greenwich*: but becauſe the above office was very high and dangerous, and alſo very chargeable to the King in fees, the King would not call for the execution of the ſervice. And this was the caſe and claim of *E.* the late Duke of *Buckingham*, made in *Michaelmas* Term, in the ſixth year of *H.* 8.

Keilw. 159. 60. Roll. Contin. 256.

(a) The following caſe of tenure is in the MS. (ſee the Preface.) "BAMMAS *in* "*Cur.' Ward'* A man of *Suſſex*, *t.* of *Haſt-* "*ings*, holdeth his land lying near the ſea, of "the Queen, by the ſervice of finding two "men with two oars to row over and beyond "the ſea, whenever it ſhall pleaſe the Queen "in her own perſon to paſs beyond ſea. It "is no tenure by grand ſerjeantry, by the "opinion of DYER, SAUNDERS, and the "COUNCIL of the Court of Wards; partly "for the *vility* and baſeneſs of the ſervice, "and alſo for that it is neither office of ho- "nor, nor ſervice of defence of the Prince "or realm; and partly, for that it is not to "be done within the four ſeas, nor within "the realm; as by *Littleton*, [§ 155. but ſee Co. Lit. 105. b. note (1)] "for the more "part it ought to be. And ſo it is holden "by WRAY, *T.* 29. *R.*"

There is a ſimilar tenure mentioned in *Beckwith*'s Edit. of *Blount*'s tenures, page 176. where the man is called *Mathew de Haſtings*, and the land holden is the manor of *Grenoble*, in *Suſſex*, by the ſervice of finding *an oar* for the King's ſervice, when he ſhould paſs over the ſea at the haven of *Haſtings*. And a *quere* is there made, whether it is within the tenure of voyage royal, aboliſhed by 12. *Car.* 2. c. 24. with a reference to Compl. Copyholder, 282.

Patentee of the herbage of a foreſt may incloſe or diſtrain, or have treſpaſs for damage done to the graſs, but not to the trees or the fruit.

Co. Lit. 4. b. 186. b. 8. Co. 137, 138. 14. H. 8. 6. 17 E. 4. 6 21. H. 7. 37. a. 9. H. 6. 52. a. 36. H. 6. 35. Mo. 302. 5 H. 7. 10. b. 3. Mar. 126. a. 7. E. 6. 80. b.

(40) THE King's grantee or patentee of the herbage of a foreſt ſhall have treſpaſs againſt any one who conſumes or deſtroys the graſs, but not the trees nor the fruit of them; and alſo ſhall take beaſts damage-feaſants there: and the writ of treſpaſs ſhall be *quare clauſum fregit*, as well as if it had been of land. And by the opinion of three Judges in *B. R.* in *Trin.* Term, 2. *H.* 8. [*Keilw.* 159. b.] the patentee may incloſe the foreſt by ſuch grant &c.

* [286. a.]

On an *exigent* after judgment, the defendant cannot appear *gratis*, and plead a releaſe from all executions, but muſt bring an *auditâ querelâ*. *Et vacat* before judgment.

5. H. 8. Kel. 166. S. C. Co. Lit. 135. a. Fitz.

(41) AT the *exigent* upon a condemnation in treſpaſs, the defendant offered to appear *gratis*, and plead a releaſe † *from* the plaintiff of all executions to have a *ſcire facias ad cognoſcendum vel dedicendum factum*, and * to find ſurety to pay the condemnation, if &c. And *Mordant* the Prothonotary ſaid, that he ſhall not be received without

† Orig. *al.*

a return

a return of *cepi corpus*, or *reddidit ſe* upon the *exigent*, and brought in, in ward, becauſe it is *ad ſatisfaciendum*. And therefore being at large, and not in priſon, he ſhall be driven to an *auditâ querelâ*; but if had it been upon a *capias* or *exigent ad reſpondend'* it would be reaſonable that he ſhould appear *gratis* at the day which he has on the roll.

Nat. 266. Dy. 284. b, 34. H. 6. 20. a. 51. 2. E. 4. 24. a. B. Audita querela 21. 45. E. 3. 24. 8. E. 4. 15. 6. E. 4. 9. 15. E. 4. 5. 22. H. 6. 36. 10. H. 7. 11. 1. H. 4. 4. b. Dy. 88. pl. 107. Vide 3. H. 7. 8. b.

[Ante 192. pl. 25.]

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(42) *HIL.* 22. *H.* 7. The tenant of the King died ſeiſed, and an office is found accordingly, and the heir had entered and taken the profits before the office, and after; and then the King pardoned him "*all* "*intruſions*:" this is of no avail without theſe words, "*iſſues and profits*" &c.

Pardon of *all intruſions* will not avail the heir, without the words "*iſſues and profits*."

10. H. 8. Cro. 198. [b. & 88. b. S. C.] Stamf. prerog. 40, 41. b. 8. H. 4 2. 29. Aſſ. 34. 3. H. 7. 3. b. 5. 16. E. 4. 4. 1. 43. Aſſ. 10. The entry and the offence pardoned, but not the iſſues and profits, B. N. C. 204. 16. E. 4. 1. 22. Aſſ. 47. Dy. 285, 249, 268. b.

In B. R.

(43) IN arreſt of judgment after a verdict *in ejectione firmæ*, it was ſaid that the plaintiff had ſuppoſed in his declaration, that the leaſe was made to him on the eighth day of *May*, in the year &c. *habend'* for the term of twenty-one years, *extunc prox' ſequentium*, and fully to be complete &c. by virtue of which the ſaid plaintiff *afterwards*, *s. on the ſame eighth day of May* &c. entered into the tenements aforeſaid &c. And Whether this entry ſhall be adjudged in law before the commencement of the leaſe; that was the queſtion: for ſome ſaid, that the term by the intendment of the *extunc* does not commence before the morrow, *s.* the ninth day: but others *e contra*, by reaſon of the "*afterwards*, *s. on the ſame day*" &c. and *extunc* ſhall be intended to be at one inſtant of time in the day, and the term immediately commenced at that inſtant, as in the morning &c.

Leaſe on the 8th of *May*, *habendum* for twenty-one years, *extunc prox' ſequent'*, on what day it ſhall begin to run.

5 El. pl. 6. 5. Co. 1. b. Dy. 307. 3. Bulſt. 203. Dy. 89. a. 304, 305. Hob. 140.

[See] Co. Lit. 46. b. [Edit. Harg. notes 8 & 9 & Cowp. Rep. 714. Powel on Powers, 495. &c 2. Bl. Rep. 973. & ſee Doug. 565.]

Hilary

¶ Memorandum, That *Michaelmas* Term was wholly adjourned over in this year by two adjournments, by reaſon of the Plague in *London* and *Weſtminſter*.

Antea 225. b.

Hilary Term,

12. Queen Elizabeth.

(44) IF a jury appear at the day of the return of the *habeas corpora*, or *diſtringas*, and the defendant alſo, and the plaintiff do not appear, nor any writ is returned, ſtill the plaintiff may be called; and if he do not appear he ſhall be non-ſuited, for the parties have a day by the roll. And this by all the Prothonotaries, and *Lennard* Chief Clerk of the Bench, by common practice: but it was much doubted in *B. R.*

At the return-day of the *habeas corpora*, tho' the ſheriff do not return the writ, ſtill if the jury and defendant appear, and the plaintiff do not, he ſhall be called, and nonſuited in *C. B.* Co. Lit. 135. a. Plow. 214. 3. H. 6. 13. b. Dy. 214, 223, 265. [See Com. dig. Pleader (X. 1.)]

*(45) THE opinion of the Juſtices of both Benches was, that the rebels from the North, who are here in the Tower, and have acknowledged their offences before three of the council, ſhould not be indicted and tried here out of the county, according to the ſtatute 33. *H.* 8. [c. 23.] for this is repealed as to treaſons by 1. & 2. *P.* & *M.* [c. 10.] notwithſtanding the opinion of *Stamford* in his book [fol. 90. a.] But they may be indicted in the county where the offence was committed, and the indictments removed into *B. R.* or before the Juſtices of *Oyer* and *Terminer* in the county of *Middleſex*; and if they plead not guilty, the trial ſhall be by men of the county where they were indicted, or by the freeholders who live here and out of the county; as was done in the caſes of *S.* and *S.* in the time of Queen *Mary*.

33. *H.* 8. c. 23. is repealed by 1. & 2. *Ph.* & *M.* c. 10. as far as relates to trials for treaſon done within the realm. Stamf. fol. 4. 164. Raſ. Tryal. 12. Raſt. Treaſon 23. Dy. 144, 298. b. 3. Keb. 566. 1. And. 105, 154. Co. Lit. 27.

[Vide Dy. 132. a. pl. 75. & Hawk. P.C.B. 2. c. 40.]

In Cur' Wardorum.

(46) THE Queen's tenant by knight-ſervice *in capite*, in conſideration of *natural love and affection to his kindred and blood*, without any money or any other recompenſe, gave, diſpoſed, or aſſigned by an act executed in his life-time, all his lands to and for the preferment of his uncle, or of the children of his brother, or of any other his couſins, lineal or collateral; and afterwards died. Whether the Queen, in all or any of the aforeſaid caſes, ſhall have the wardſhip *(a)* or primer ſeiſin as the caſe requires, or the third part of the ſame lands, either by theſe words of the ſtatute, 32. *H.* 8. c. 1.; *ſ.* "*preferment of his children*, "*payment of his debts, or otherwiſe, at his will and pleaſure*," or by the meaning and equity of the ſtatute, becauſe that ſuch affection and conſideration excited this gift as excites gifts to children. And in a meeting of all the Judges at *Serjeants Inn*, it was holden by Onslow Attorney of the Wards, Wray, and Barham the Queen's Serjeant, Harper Juſtice, Welshe Juſtice, Saunders Chief Baron, and Dyer Chief Juſtice of the Bench, that childrens children, and ſo on, deſcending in a right line, are within the ſtatute &c. and this by the words in the preamble, *ſ. generations, family, children, and poſterity*. And Dyer alſo thought that collateral couſins ſhould be in the ſame predicament. But Kayleway Surveyor of the Liveries, Carus, Southcot, Weston, and Whiddon Juſtices, *contra*, in both points &c. and Catlin Chief Juſtice alſo: but Saunders Chief Baron, only in one as above. (47) And in next *Trinity*, in the lodgings of Secretary *Cecil*, Maſter of the Wards, near the *Savoy*, the caſe was argued for four hours and an half, and the opinions as above, except Carus, who changed his opinion. And on the part of the Queen this reaſon was added, That it cannot be * underſtood by any one that the intention of a man ſhould be more favourable and beneficial to his collateral couſin who is of the remoter blood, than to one of his own children, or his wife, who are nearer &c. Alſo, in the third article of the ſtatute of Explanations, 34 &

Conveyance by the King's tenant in chief, in conſideration of natural affection to collateral relations, is not within 32. *H.* 8. c. 1. as conveyance to childrens children is.

[Cro. Jac. 157. 6. Co. 75, 77.]

Dy. 253. a. Co. Lit. 78. Raſ. Wills. 2.

[See 3. Term Rep. 372. 4. Term Rep. 749. Powel on Powers 346. 349.]

6. Co. 77. a. 9. 132. a. 133. Dy. 96, 98.

* [287. a.]

Raſ. Wills. 3.

(a) *Wardſhip* and primer ſeiſin, with the other conſequences of feudal tenure, abolished by 12. *Car.* 2. c. 24.

35 *H.* 8. [c. 5.] it is declared and enacted, that the King's tenant in chief hath, and by that act ſhall have authority to diſpoſe &c. to any perſon or perſons (except bodies politic and corporate) by will or writing, or act executed in his life, two parts &c. omitting the words "*to and for* "*the advancement of the wife, preferment of the children, pay-*"*ment of the debts, or otherwiſe,*" Wherefore &c. Therefore note the generality &c. And CECIL argued ſenſibly to the ſame intent. Alſo, note the meaning of the law in frank-marriage, which is as well with a couſin as with a daughter of the donor for advancement.

Lit. 4. a. 17.

See *Brooke* tit. *Teſtament*, [pl. 24.] 2. *E.* 6. It was holden as law by the CHANCELLOR and JUSTICES, that although the gift, executed in the life of the donor, be to a ſtranger, of the entire land, yet the King ſhall have the ward or primer-ſeiſin of the third part, according to the opinion of DYER.

Dy. 136. b. 323, 345. vide 6. Co. 77. a.

The writ of privilege for officers of the Courts is with a poſitive *ſuperſedeas*, and no *procedendo* lies, if redreſs may be had in that to which defendant belongs: *contra* where privilege is only on account of a ſuit depending in the ſuperior Courts.
Dy. 192. Ro 668. Gouldſ. 33, 34, 64 21. H. 7. 39. 20. H. 7. 2.

(48) IF any officer, clerk, or attorney of any of the four ordinary Courts, who ought to be attendant on the Court, be arreſted in *London* or other place during the time of his attendance, he ſhall have a writ of privilege, with a poſitive *ſuperſedeas* therein; and telling the plaintiff that he may ſue in the Court where &c. if he pleaſe, where he may have the remedy of his ſuit as well as elſewhere; in which caſe no *procedendo* ſhall be awarded in the inferior Court. Otherwiſe is it where the party ar-

(48) If *A.* attorney of *C. B.* ſue *B.* an attorney of *B. R.*, *B* ſhall not have privilege *Per Cur. Trin.* 29. *Eliz. C. B. Mich.* 41, 42. *Eliz.* By ANDERSON, if an attorney of *C. B.* be ſued in *London*, and there the ſuit is continued by pleading to iſſue, and then defendant bring a writ of privilege, that the courſe in *C. B.* is to award a *procedendo*, [2. Lev. 129. 2. Black. Rep. 1325. Barnes 44, 53. 4. Bur. 2027. 1. Bl. 19. 3. Term Rep 573]

Mich. 42, 43. *Eliz.* † *Fill* and *Poyntell*'s caſe. By all the Court, if one who hath cauſe of privilege be ſued in *London*, and plead to iſſue, whereby he hath waited over his time, no privilege ſhall be allowed. [1. Bl. Rep. 231 See Dougl. 312]

Mich. 28, 29. *Eliz. B. R.* † *Whipp* and *Salew*'s caſe. *A.* having privilege of *C. B.* as attorney, and being indebted to *B.* and having his goods attached according to the cuſtom of foreign attachment in *London* upon default of *B.* in a ſuit againſt *B. A.* removes it into *C. B* out of *London*; and well, although this cuſtom be not allowable there, and it ſhall not be remanded. *Sey*'s book, fol. 6. a. [Gilb C. P. 210. 1. Saund. 67. See Comb. 427. 1. Sid. 362.]

Trin. 4. *Jac. B. R. Butts* v. *Clerke.* [7. Vin Ab. 517, 518] If officers of the Court ſue there by bill for land without a franchiſe, cognizance ſhall not be allowed; by POPHAM and WILLIAMS. But FENNER and TANFIELD doubted: but the law ſeems to be as POPHAM held, and that this is pleaded in the grant of cognizance.

Eaſt. 1. *Car. B. R. Armington*'s caſe, [Palm. 403.] a clerk of *B R.* was ſued in an inferior Court, for a ſum of five pounds, ſince the ſtatute of 21. *Jac.* [c. 23.] and by JONES and the CHIEF JUSTICE, a writ of privilege ſhall be allowed. [But ſee 3 Burr. 1583.]

reſted hath privilege by reaſon of a ſuit depending in the ſuperior Court by him, or againſt him, and that is the only cauſe of his privilege. Note the diverſity, by all the Juſtices and Prothonotaries of both Benches.

[Offic. Brev. 161. Theſaur. brev. 298, 299, Gilb. C. P. 209 &c. 1. Com. dig. 451.] 31. H. 8. 36. Dy. 34. Finch. 52. b. Vaugh. 155.

[See of ſuch privileges 2. Bl. 1113. 1. Hen. Bl. 636. 4 Term Rep. 377. 2. Bl. 1085. 2. Wilſ. 231. 3. Term Rep. 665.]

(49) NOTE, That divers perſons who were in the rebellion in the North, this year fled to *Scotland*, and are ſtill there. It was aſked as a queſtion, Whether if they be indicted thereof, and proceſs of outlawry awarded and returned againſt them, being there reſident or dwelling at the time of the outlawry pronounced, the outlawries are good and ſufficient in law, or erroneous, or not, by the ſtatutes 26. *H.* 8. c. 13. & 6. *E.* 6. c. 11? *quære* well thereof, whether they extend to treaſons generally, *s.* at common law, and declared by 25. *E.* 3. [ſt. 5. c. 2.] or only to the new treaſons created by the ſame acts. And by the opinion they ſhall extend to all treaſons, *s.* by the words, "*any offenders* "*in treaſons.*"

Perſons committing treaſon of any ſort, may be outlawed while beyond ſea, 26. *H.* 8. c. 13. & 6. *Ed.* 6. c. 11. extending to all treaſons whatever.

Lit. 103. Fitz. contr.' claim. Plow. Ult. 14. Eliz. 304. a. Raſ. Treaſon 12, 19. Dy. 289.

[3. Inſt. 32. 216. 2. Hawk. P. C. 653. See 2. Str. 824.]

* The Queen *againſt* the Biſhop of St. David's. * [287. b.]

(50) *THOMAS BEKE*, late Biſhop of *Saint David*'s, being patron and ordinary of a benefice in *Wales*, founded a college in his dioceſe, lately diſſolved by the act of 1. *E.* 6. [c. 14.] being of thirteen canons ſeculars, and one chanter, reſerving *officium et vices decani* to himſelf and his ſucceſſors, Biſhops of *Saint David*'s, *tanquam Decanus ſicut eſt in eccleſiâ cathedrali Meneveni*, and aſſigned the ſaid benefice for the living of one of the thirteen canons, and made it a prebend in the ſame college. But afterwards he by licenſe of the King transferred the ſaid benefice, without the conſent of the college, to the deanery, *s.* to the deanery, ſo that he might retain it for the table of the Biſhop for the time being; and after this he died. And the ſee being vacant the King preſented to the benefice, and his preſentee was inſtituted and inducted; and afterwards the King reſtored back the patronage entirely to

The Biſhop of *St. David*'s, by licenſe founds a college with canons ſecular, reſerving to himſelf, *officium decani tanquam decanus ut eſt in eccleſiâ Meneveni*, and having aſſigned a benefice to one of the canonries, without licenſe of the college, transfers it to the Deanery. By the civil law this tranſlation is void, eſpecially for his own benefit; and the creation of a deanery is alſo void, for want of ſufficient words to create ſuch office. Jenk. cent. 6. c. 7. Dy. 267, 273. 40 E. 3. 28. a.

to the ſucceſſors of the Biſhop, who at all times ſince, as proprietaries, have enjoyed the benefice and profits thereof, as parcel of the poſſeſſions of the biſhoprick. Now, Whether this benefice by the act of diſſolution be the right of the Queen or of the Biſhop, *quære*, in the Exchequer, between the Lady the Queen for *Cary*, and the Biſhop of *Saint David's*. (50) And by the opinions and ſubſcriptions of YALE, JONES, DALE, and LLOIDE, Doctors of the Arches, the tranſlation of the ſaid benefice of the college is void by the eccleſiaſtical laws: and the rather, becauſe the Biſhop himſelf was to receive the profits thereof. Alſo they held the creation of the Biſhop Dean to be void, for default of ſufficient words of creation.

21. E. 4. 19. 8. E. 4. 6. 9. E. 4. 11.

¶ Note, That afterwards, *s.* in *Michaelmas* Term, in the 13th and 14th years of the preſent Queen, a ſubſtantial jury of the county of *Hereford* paſſed in the Exchequer for the Biſhop againſt the Queen, after a thorough examination of the iſſue, Whether the Biſhop of *Saint David's* was ſeiſed of the aforeſaid benefice named *Lannarthe cum capellâ de Launinâ* in right of his biſhoprick, or in right of the deanery of the college aforeſaid? and found in right of his biſhoprick &c.

Eaſter

* Eaſter Term,

12. Queen Elizabeth.

(51) A BILL of perjury was ſued in the Chancery for perjury committed there againſt the form of the ſtatute, in the 5th year of the preſent Queen [c. 9.]; and it was doubted, if the defendant would plead not guilty, Whether he ſhould be ſworn to his plea; and alſo to anſwer interrogatories as is uſual in the ſtar-chamber. And it was reſolved, by the opinion of CATLYN, DYER, SAUNDERS, and WHIDDON, that he ſhall not be ſworn or examined upon interrogatories, unleſs it ſo be that the Court of Chancery hath abſolute authority, and had uſed to examine perjuries in that court before the ſtatute; for then this is reſerved by the laſt proviſo in the ſtatute as for the ſtar-chamber. And if the Court of Chancery will examine perjury committed there (as it may by the ſtatute) that ought to be by Latin bill, and the pleadings in (*a*) Latin, and iſſue joined there, and tried in *B. R.* as is cuſtomary in ſimilar caſes. See Dr. *Coſens*, 85.

Suit in the Chancery for perjury committed there muſt be by Latin bill, and the iſſue tried in *B. R.* and the defendant ſhall not be ſworn to his plea, nor examined on interrogatories unleſs that Court had abſolute authority in perjuries, before 5. *El.* c. 9. ſaved by the 13th ſection.

3. Inſt. 164. Raſ. Perjury 2. 1. Ro. Ab. 99. Dy. 302. b.

[Vide ante 243. a. 54.]

Ro. 338.

[1. Eq. Ab. 128.]

(51) *M.* 5. *Jac. B. R.* † *Thomas Humphrey* indicted *Leceſter* for not repairing a road; and this was quaſhed becauſe it was in *Engliſh*.

If the Chancery be a court of record, 8. *E.* 4. 13. 24. *E.* 3. 65. ſeem not law; for upon demurrer it may determine of a term and freehold. By *Andrews*, reader of *Lincoln's Inn*, *June* 1628. [1. Harriſon Ch. Pr. 2. & 3. 1. Lev. 242. See Yelv. 111. 1. Bulſt. 107, 108.]

Trin. 19. *El. B. R.* † *Chr. Knight*, was indicted upon the ſtatute 5. *El.* c 9. of perjury, becauſe he had acknowledged an anſwer to a bill exhibited againſt him by one *Brooke* &c. and was diſcharged, becauſe the ſtatute extends only to the perjury of witneſſes in their examinations &c. by WRAY and other Juſtices. [See Cro. Eliz. 148. 1. Hawk. P. C. 330.]

(*a*) But by 4. *Geo.* 2. c. 26. § 1. All proceedings whatſoever in any Court of Juſtice in *England*, and in the Court of Exchequer in *Scotland*, muſt be in *Engliſh*.

Eaſter Term, 12. Queen Elizabeth.

In the STAR-CHAMBER.

Sir John Marvin's Caſe.

If one writing a ſick man's will inſert a clauſe after he is ſpeechleſs, without previous direction, it is not forgery within 5. *El.* c. 14.
3. Inſt. 173, cont.
Raſ. Forger de Faux Faits 2. 13. El. 302. b.
[1. H. H. P. C. 684. but ſee 1. Hawk. P. C. 336, 337. And by 2. Geo. 2. c. 25. made perpetual by 9. Geo. 2 c. 18. forgery of a will is made a capital offence, and ſee 1. Str. 483. 3. Term Rep. 126.]

(52) *MEMORANDUM.* In the grand caſe of forgery touching Sir *John Marvin*'s will, it was moved for a doubt, if one who writes the will of a man lying mortally ſick, inſert a clauſe or article in the will after the teſtator is ſpeechleſs, and without memory, and he did not command the writer beforehand to put in that article or clauſe, Whether this be a forgery of the will, and puniſhable by the ſtatute of the 5th year of the preſent Queen, [c. 14.] or not? And it was agreed and reſolved by the beſt opinion there, that he is not; nor was it the intention of the makers of the ſaid laws.

(52) Star-chamber *Eaſt.* 3. Jac. [Mo. 759. Noy. 101.] Upon a bill of forgery againſt *Combs*, for the ſuppoſed forgery of the will of *R. Barkenbury*, it was holden by POPHAM, FLEMING, and YELVERTON, that to omit a thing or legacy out of a will which he is appointed to inſert, is not a forgery; but if he be directed to give land to one for life, with remainder to another in fee, and he omit the eſtate for life, this is forgery. Alſo by them, If one write a will without direction, and bring it to the deviſor, and he allow it, this is good: but if he then be of nonſane memory, the will is void; yet it is not forgery, and ſo adjudged; but the filling up of the blanks by *Combs* at the time when BRAKENBURY was not of ſound memory, was taken to be a miſdemeanour, ſo knowing him to be of nonſane memory, fol. 76.

Floteman *againſt* Bygot, one &c. in Error.

An attorney of *C. B.* ſuing by attachment of privilege, ſhall find pledges to proſecute as well as a ſtranger ſuing an attorney.
7. H. 6. 38. b. 2. H. 7. 1. 17. 9 E. 4. 27. 18. E. 4. 9. 7. H. 6. 38. 11. H. 4. 7. 2. H. 7. 1. a. 3. Car. Cro. 92. Noy. 121. 20. H. 6. 44. 1. Ro. Rep. 445. Pal. 518. 14. Jac. Cro. 418. 3. Bulſt. 61. 275.

(53) IF an attorney or clerk of the Bench ſue any ſtranger there, by attachment of privilege, Whether he ſhall find of neceſſity ſureties, or pledges to proſecute, as well as a ſtranger who ſues an attorney or clerk there by bill, ought to find pledges to proſecute at the end of his bill? And for the default of finding ſureties in the end of the count, the judgment was reverſed in *B. R.* on the laſt day of this Term, notwithſtanding the verdict paſſed in debt; and notwithſtanding many precedents that this is not neceſſary in an attorney who is ſuppoſed always preſent in court: and the words, if the plaintiff ſhall make you ſecure to proſecute &c. are wanting in the attachment of privilege, therefore &c. * But yet there are

(53) *H.* 14. Jac. *B. R.* Dr. *Huſſey* v. *Moor.* [Cro. Jac. 414.] Judgment that pledges ſhould be in raviſhment [of ward] and it is not aided by ſtat. 18. Eliz. [c. 14.]
E. 4. *Car. B. R.* † *Jenkes* and *Davies*, judgment in an inferior court reverſed, becauſe no pledges. This is not aided by any ſtatute of *Jeofails.*

many

many precedents that pledges ought to be found in the caſe above (*a*).

(*a*) By 16. & 17. *Car.* 2. c. 8. no judgment after verdict ſhall be ſtayed or reverſed, for this omiſſion, and by 4. *Ann.* c. 16. it is aided on general demurrer. See 3. Lev. 39. 361. 1. Wilſ. 2. Wilſ. 142. And in appeal of murder pledges muſt be found. 2. Str. 854.

Sir Robert Acton's Caſe.

IN CUR' WARD.'

(54) THE King being ſeiſed of the manor of Rocke by his letters patent, demiſed it to one *Humfrey Orme*, for twenty-one years (all courts and perquiſites of courts excepted) which eſtate *Will. Child* by ſeveral conveyances hath. The king grants the ſaid manor, with the courts and perquiſites of courts, to Sir *Robert Acton* in fee, who made a leaſe of the ſaid manor (all courts and perquiſites of courts excepted) to the ſaid *Child* for fifty years, to commence after the expiration of the former leaſe. Sir *Robert Acton* died ſeiſed &c. and his heir granted a copyhold of the ſaid manor according to the cuſtom of the manor during the firſt term of twenty-one years, ſuppoſing that he might lawfully do ſo, becauſe the courts and perquiſites thereof are ſevered from the manor by the firſt exception made by the King during the term of twenty-one years; but after this term expired, the ſecond exception is void and repugnant in the leaſe of the manor, by the ſaid Sir *R. Acton*'s heir being a ſubject; but not ſo in the caſe of the King. And this was the opinion of EDWARD SAUNDERS, Chief Baron, and JAMES DYER, Chief Juſtice of the Bench, in both the caſes above.

The King may grant a manor, and except the Courts and perquiſites, but a ſubject cannot. 1. Bulſt. 55. Finch. fo. 25.

B. N. C. 7 8. H. 7. 2. 13. H. 7. 19.

[Compl. Copy. 379.]

37. H. 8. 59. a. 1. Mar. 97. a. Dyer 173, 264. Hob 107, 108.

[Mo. 870. Seep. Touch. 77.]

(54) 26. Aſſ. 53. The King grants the patronage of a priory; a corody paſſes without mention, and the King † *may not* grant it to another, nor reſerve it by expreſs words. See 4. Co. 33. *Mitton*'s caſe, 2. El. 175. [ante pl. 25.] *Scrogg*'s caſe, *M.* 3. Jac. *B R.* † *Gibbs.* A man may leaſe a manor, excepting a court leet, not baron. 31. *Eliz.* † *Wheeler*, holden that a covenant that the leſſor ſhall hold courts, is void.

† Orig. *Reign pois.*

Biſhop of Durham's Caſe.

(55) A MAN hath *jura regalia* before the time of King *Ed.* 3. and the eſcheats and forfeitures of lands of traitors holden of him within a certain precinct. And afterwards

A grantee of the forfeitures of traitors before 25. *E.* 3. is not affected by that ſtatute, which is only explana-

tory of the King's right to them. Nor by 26. *H.* 8. c. 13. on account of the fifth ſection, ſaving the rights of ſtrangers, except in thoſe forfeitures which were made ſuch by that ſtatute; and for new treaſons created ſince the grant, he has no right to the forfeitures.

Neither 1. *E.* 6. c. 12. nor 1. *Mar.* c. 1 repeals 26. *H.* 8. c. 13. as to forfeitures for old treaſons.

Jenk. cent. 6. c. 16. S.C. Co. Lit. 114. Plow. 334. a. 10. H. 7. 13. b. Dav 62. b. 63. a. de proviſionibus ca. 2. Raſt. Treaſon 1. 1. H. 7. 13. 2. Bulſt. 226, 227. 3. Bul. 157. Fine 75. 13. H. 4. 8. a. 3. Co. 10. b. 21. H. 7. 1. 1. Ro. Rep. 10. Raſ. tr. 12. 19.

* [289. a.]

afterwards by ſtatute of the 25. *E.* 3. [ſt. 5. c. 2.] made for explanation of treaſons, it is declared that the forfeitures and eſcheats in ſuch caſes of treaſons belong to the King, as well of lands holden of him as of lands holden of others; and there is no ſaving to any perſon: Whether by this ſtatute the eſcheats and forfeitures of traitors are taken from the ſaid Lord or not? And by the opinion of ALL the JUSTICES and CHIEF BARON in the next Term, except CARUS, the eſcheats &c. are not reſumed from the Lord who hath ſuch eſcheats &c. by the ſaid ſtatute. For this is only a declaration of treaſons at common law, which was made by the King at the requeſt of the Lords and Commons in Parliament; and the forfeitures there expreſſed are not given to the King by the act, but declared to belong to the King &c. which is more than is neceſſary &c. (56) Alſo, by the ſtatute of the year 26. *H.* 8. c. 13. and by 5. & 6. *E.* 6. c. 11. it is enacted, "That every offender being convicted or outlawed of "any manner of high treaſon, ſhall loſe and forfeit to "* the King, his heirs and ſucceſſors, all the lands and "tenements that any ſuch offender ſhall have of any "eſtate of inheritance, in uſe or in poſſeſſion, by any "right, title, or means, at the time of the treaſon com-"mitted, or any time after &c. ſaving to every perſon "and perſons, their heirs and ſucceſſors, other than the "offenders, their heirs and ſucceſſors &c. all ſuch rights, "titles, intereſts, poſſeſſions, leaſes, rents, offices, and "other profits which they ſhall have at the day of the "committing ſuch treaſons, or any time before, in ſuch "ample manner as if the ſaid act had not been made." Whether by this ſtatute the eſcheats and forfeitures for treaſon are taken from him who hath *jura regalia* as well of lands in fee ſimple as in tail? Note, By the firſt part of this act, ſlanderous words of the Prince, as infidel, ſchiſmatic, uſurper, &c. And alſo the rebellious holding of caſtles, or forts, or the King's ſhips, are made treaſons; and theſe and all other formerly created treaſons committed out of the realm are puniſhable by indictment and proceſs of outlawry, as other treaſons committed within the realm are. Alſo the clauſe in the ſaid act of forfeiture is general for all manner of treaſons, and the forfeiture of lands mentioned therein is limited to the King, his heirs and ſucceſſors, of any eſtate of inherit-

4. Mar. 144. a.

Dy. 267.

inheritance, and in whatever right ſuch offenders hold thoſe lands. And it muſt be underſtood that theſe words *s. to the King, his heirs and ſucceſſors*, are not void and ſuperfluous for the forfeiture of lands in fee ſimple and for ancient treaſons which were treaſons by the common law at and before 25. *Ed.* 3. becauſe the law ſaid as much before; for ſuch treaſon drew after it the forfeiture and eſcheat to the Lord the King *de meró jure*. (57) And in an aſſembly of all the Juſtices and the Chief Baron, it was holden by ALL the JUSTICES of both Benches and the CHIEF BARON, except HARPER Juſtice, that the act of 26. *H.* 8. as far as relates to the treaſons at common law, remains unrepealed by 1. *E.* 6. [c. 12.] and 1. *Mar.* [c. 1.] And for the eſcheat and forfeiture of lands in tail, or of lands in right of churches and monaſteries, the party who hath *jura regalia* &c. ſhall not have advantage thereof; becauſe the King himſelf could not by law have the forfeiture of them before the ſtatute. And alſo the tenant in tail holds of his donor, and not of the Lord &c. And alſo for new treaſons made ſince the grant of the ſaid prerogative, the patentee ſhall not have the forfeiture &c. But for fee ſimple land the ſaving of the act will ſerve the Lord; by five Judges, HARPER, CARUS, WELSH, SAUNDERS Chief Baron, and DYER; but SOUTHCOT, WESTON, WHIDDON, and CATLYN Chief Juſtice, *e contra*.

22. Aſſ. 49. b. 3. Bulſt. 157. 2. Bulſt. 227.

1. & 2. Mar. c. 9. & 10. 3. Inſt. 19. Dy 180. Stamf. 4. & 187. Godb. 310. 1. Ro. Rep. 10. 2. Ro. Rep. 340. 6. H. 7. 5. a. 6. Co. 73. b. 22. E. 3. 22. Plow. 124. a. 129. b. 237. Antè 85. 22. E. 4. 23. Davis 65. 63.

[1. H. H. P. C. 240. 241. 252—258. 275. 283. 309. Foſter 95. a. Hawk. P. C. 637. 641, 642.]

Sir Thomas Fitzherbert's Caſe.

* [289. b.]

(58) SIR *Thomas Fitzherbert*, Knight, brought a raviſhment of ward in the county of *York*, ſuppoſing by the writ that the * raviſhment was made in the county of *Derby*, and carried from that county into the county of *York*; and counted, that the tenancy and the ſigniory by knight-ſervice was in the county of *Derby*. And the raviſhment was traverſed and found for the plaintiff, and judgment given for the plaintiff. And this matter was aſſigned for error above; for the original ſhould have been brought in the county of *D.* And by the ſtatute of *Weſt.* 2. c. 35. a writ which begins, "*Queſt' eſt nobis*" is there framed, to be directed to the ſheriff of *York*, whither the body of the heir was carried, to have the infant at a day

Raviſhment of ward muſt be brought in the county where the wrong was committed; tho' if the ward be carried into another, *Weſt.* 2. gives a writ to that ſheriff to have the body in Court. [2. Inſt. 440.] F. N. B. 140. f. Raſ. Wards. 12. 34. E. 3. Gard. 164. Br. lieu: 10. 21. E. 3. 42. 40. E. 3. 7.

14. E. 4. 3. b. 38. H. 6. 14. b. Co. 7. 3. a. 23.

day in court *ad reddendum cui* &c. But the original writ of raviſhment ought to be brought in the county where the tort was committed. And ſo was the opinion of the Court.

The Lord paramount avowed for ſervices, the plaintiff prayed aid of his leſſor claiming to hold for ten years, whereas he had a leaſe for ſixty; this is immaterial, and will not eſtop his executors from claiming to the end of the term againſt the leſſor, or his grantee of the reverſion.

8. E. 4. 23. 2. Co 21.

34. H. 6. 7. a. 22. H. 6. 18. a. 20. E. 4. 10. 38. E. 3. 2. Eſtop. 109. 22. H. 6. 2. 33. H. 6. 19. b. 8. H. 4. 12. 22. E. 4. 38. 40. E. 3. 30. 10. E. 4. 12. 5. E. 4. 8. 7. E. 4. 18. Plow. 81. 1. Ro. Ab. 871.

7. H. 4. 30. a. 30. Aſſ. 46.

[See Com. dig. Eſtoppel. E. 6.]

(59) LORD and Tenant. The tenant made a leaſe for the term of ſixty years, and afterwards the termor is diſtrained by the lord, and brought a replevin; and the lord avowed for ſervice of the leſſor in arrear, as within his fee and ſigniory. The termor prayed in aid of his leſſor, ſuppoſing by his aid prayer that he held of his leſſor by a leaſe for the term of ten years, and ſhewed the commencement to be after the leaſe of ſixty years commenced; and after joining in aid, they pleaded *hors del fee le ſeignior*; and it was found againſt them, and judgment given for the avowant accordingly. And afterwards the leſſor bargained and ſold the reverſion by indenture, enrolled according to the ſtatute. The termor died, his executor entered, and afterwards the ten years expired, and the vendee entered upon the executor and diſtrained on him damage-feaſant. And in replevin brought by the executor, the vendee would eſtop him from claiming more than ten years by the matter above: whereupon there was a demurrer &c. And afterwards in *Hil.* Term, in the 15th year of the preſent Queen, having heard counſel on both ſides in my chambers in our Inn in *Fleet-ſtreet*, it was reſolved by ALL the four JUDGES that this was not any eſtoppel, becauſe the ſhewing of the commencement and numbers of years by the plaintiff to have aid, whether the number be more or leſs, is not material nor traverſable between the leſſor and leſſee; and alſo the land in this caſe is not demanded nor in queſtion, but the ſervices &c. and ſo the eſtoppel is not for the land, and then neither the vendor nor vendee can have advantage of this eſtoppel, Wherefore &c.

Trinity Term,

12. Queen Elizabeth.

The Biſhop of London's Caſe.

(60) *EDMOND*, Biſhop of *London*, one of the commiſſioners of eccleſiaſtical cauſes, was tranſlated to the Archbiſhoprick of *York* ſince the laſt * Term. It was moved, Whether his authority to exerciſe this commiſſion was thereby determined? And by the opinion of divers Juſtices it ſeems, that it is not; but it is ſaved by the ſtatute 1. *E.* 6. c. 7. by the clauſe, "*and alſo be it ordained* "*and enacted &c. that albeit any perſon being juſtice of aſſiſe* "*&c. or being in any other of the King's commiſſions whatever,* "*ſhall fortune to be made or created Duke, Archbiſhop* &c." which is to be conſtrued liberally &c.

The Biſhop of *London*, being a high commiſſioner, is tranſlated to *York*, ſtill his authority continues by 1. *E.* 6. c.

[* 290. a.]

2 Inſt 569. Co. 4. 4. b. 5. Mar. 159. a. Dy. 165. a. 206. a. Raſ. diſcont. de proceſ 2. B N. C 495.
[See note (*x*) to note (36) poſt fol 355.]

Luſher *againſt* Banbong.

(61) A Huſband and his wife were ſeiſed of a tenement in *London*, to them and the heirs of the huſband; and the huſband covenanted by indenture in conſideration of twenty pounds, that he and his wife would ſuffer a recovery by writ of right in *London*, to be had againſt them by *A. B.* and *C. D.* (which is as ſtrong to bind the right of a *feme covert* by the cuſtom of *London* as a fine at common law) and that the recovery ſhould be to the uſe of the recoverors until they made a good and ſufficient leaſe by indenture for a term of forty years. And after the making, ſealing, and delivery of the indenture, then the recoverors and their heirs ſhould be ſeiſed to the uſe of the huſband and wife, and the heirs of the wife. And the recovery, and leaſe were had and executed accordingly. Whether this leaſe be determinable by the limitation of this uſe in the recoverors until they have made

A. and his wife ſeiſed to them, and the heirs of *A* in *London*, ſuffer a recovery there according to the cuſtom to the uſe of the recoverors till they make a leaſe, and afterwards that they ſhall ſtand ſeiſed to the uſe of *A.* and his wife, and the heirs of the wife. This is a good leaſe when executed, and ſhall bind the wife after the death of her huſband.

[Vin. Ab. Baron and Feme (P.) Uſes (T)]

Jenk. cent 6. c. 17. S. C. 2. Co. 57. b. Noy. 122. Plow. 515. 1. Ro Ab. 388. 556. B. N C. 109. 155. 2 Ro. Abr. 798. 10. Co. 42. 47.

(61) In the argument of *Vickery* and *Yolland*'s caſe *Mich.* 2. Jac. [Mo. 788.] Holden, That the uſe doth not ariſe to the huſband and wife and the heirs of the wife, until the determination of the leaſe; for the leaſe eſtops the raiſing of the future uſe. [Powel on Powers, 318.

Mo. 632.
8. Co. 17.
27. Eliz. rot. 752.
2 Co. 65. 66.

the leaſe, and by the limitation of the uſes afterwards the leaſe be deſtroyed, or not? was the ſpecial verdict upon not guilty in treſpaſs in *London* laſt Term. And in next *Michaelmas* Term the opinion of ALL the JUSTICES was, that the leaſe is good, and not defeaſible by the wife, who ſurvived her huſband: for her ancient and former right and eſtate was gone and extinct by the ſaid recovery, and then the limitation of the uſe after the leaſe made, raiſed and created a new eſtate in the huſband and the wife; and they claim under the recovery and leaſe, and not by any title before, wherefore they ought to hold it charged with the leaſe; and judgment was given accordingly. And ſo was the opinion before, of all the Juſtices in *B. R.* with which JEFFERY Serjeant, would not be content. And *quære* what remedy the wife hath for the rent-arrear which was reſerved upon the leaſe? &c.

[See Cro. Eliz. 764. 854. 5. Bac. Ab. 384. 1. Wood's Conv. 180.]

8. H. 7. 9. a. Dy. 162. pl. 49.

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* [290. b.]

In formedon, the tenant vouches *C.* as ſon and heir of *A.* the ſon and heir of *B.* Counterplea, that *B.* the grandfather, of any of his anceſtors, never had any thing &c. is bad, without alſo counterpleading the ſeiſin of *C.* himſelf, unleſs he were vouched as within age, and the parol prayed to demur. Fine and non-claim alſo pleaded in bar, Replication, that the parties to the fine had nothing at the time &c. but that a ſtranger was ſeiſed in fee, is good, for the ſeiſin of a ſtranger is immaterial, and not traverſable.

Joint-tenure of parcel with his wife, alſo, pleaded in abatement, is bad after a plea in bar and voucher, which affirms the writ. Nor ſhould joint tenancy of parcel abate the whole writ, tho' the demand be of an entire thing; but for the reſidue it ſhall ſtand *Contra* of non-tenure of parcel.

In formedon if the demandant has judgment

Fitzwilliams *againſt* Copley.

(62) IN the *formedon* by *Fitzwilliams* againſt *Copley*, of the manor of *S.* with the appurtenances, the writ and count was of a gift made in the time of *Ed.* 2. to one *Fitzwilliams*, and the heirs male of his body &c. and conveyed lineally by divers deſcents to one *William Fitzwilliams*, who was ſeiſed in the time of *H.* 8. *s.* within fifty years, and made every one of them heir to the other; and that the ſaid *William Fitzwilliams* died without heir male of his body, and conveyed the land to *Hugh Fitzwilliams*, the preſent demandant, as couſin and heir to the ſaid *William* * *Fitzwilliams*, by one who was uncle to the ſaid *William*, and beſayle to the demandant, and ſhewed how, *s.* as ſon of *I.* the ſon of *R.* &c. The tenant as to one moiety vouched to warranty one as ſon and heir of *A.* the ſon and heir of *P.* &c. as of full age, to be ſummoned immediately &c. and as to the other moiety (except the moiety of ſeven meſſuages, fifty-nine acres of land &c.) he pleaded in bar that a ſtranger was ſeiſed thereof in fee, and being ſo ſeiſed, a fine executed, with proclamations, was levied between him and a ſtranger of the ſaid moiety (except as before excepted), which eſtate he hath, with an averment of a quiet ſeiſin in the conuſee and himſelf

himſelf for five years after the proclamations; without entry or claim of any perſon &c.; and as to the moiety excepted, he pleaded joint-tenancy of that by fine with his wife, and demanded judgment of the writ &c. And the demandant as to the voucher counterpleaded it in this form *s.* that the ſaid *B.* the grandfather of the vouchee, or any of the anceſtors of the vouchee whoſe heir he is *nunquam habuerunt aliquid* &c. after the gift, and before the writ purchaſed, unleſs jointly with *C. D.* and *E. F.* *ex dono et feoffamento talis eis et præfato B.* (the grandfather of the vouchee) *inde factis*, with an averment of the continuance of this eſtate during the life of the grandfather, and that the ſaid *C. D.* and *E. F.* ſurvived &c. (63) And to the plea in bar he took the exception, *quod partes ad finem nihil habuerunt tempore finis levati*, *immo* a ſtranger was ſeiſed thereof in fee &c. and as to the plea in abatement of the writ, he affirmed the writ and traverſed the joint-tenancy, upon which they are at iſſue of the country &c. And the tenant as to the counterplea demurred in law; and as to the other moiety whereof the fine was pleaded in bar, he maintained the fine to be good by ſeiſin in uſe in the party to the fine, and ſhewed particularly how the uſe commenced &c. and upon this the demandant demurred in law. And by ALL the COURT the counterplea was holden inſufficient, becauſe it does not extend to the ſeiſin or poſſeſſion of the vouchee himſelf who is vouched, of full age; but if he had been vouched as within age, and that the parol ſhould demur, then to counterplead the ſeiſin of the anceſtors as whoſe heir he is vouched, and alſo of other anceſtors of the vouchee according to 21. *E.* 3. fo. 10. ſuffices. (64) And note, That the demandant in the exception, *quod partes ad finem nihil habuerunt* &c. after the *immo* above, conveyed the land to one of his ſaid anceſtors in fee after the ſeiſin of the ſaid *Will. Fitzwilliam*, in the time of *Henry* 8. and that he died ſeiſed of a deſcent to his ſon, and that he entered and was ſeiſed by force of the entail aforeſaid; and ſo he ſhewed even a later ſeiſin than *William* had, by which it was ſaid he had abated his own writ, becauſe he does not make himſelf heir to the perſon who was laſt ſeiſed by force of the entail. But the opinion of ALL the JUSTICES was, that this ſhewing ſhall not deſtroy or abate his writ,

for part, no writ of error lies before the whole matter is determined. [Dal. 75. pl. 2. Co. Ent. 317. 8. C.]

2. Ro. Ab. 767. Dy. 216. 1. Leon. 77. 3. Cro. 689. 8. H. 7. 6. 28. E. 3. 96. Dy. 341. b. 21. E 4. 22. 9. H. 6. 46. 35. H. 6. Counterple de Vouch. 10. 44. E. 3. 27. b. Finch. 8. H. 7. 16.

3. H. 7. 9. a.

Weſt. 2. ca. 39. 43. E. 3. 3. b.

2. Inſt. 244 1. Keb. 115. 8. H. 7. 5. b. 10. H 6. 15. b. 13. H. 7. 25. a. 48. E. 3. 28. 11. H. 4. 21. a. 44. E. 3. 27. 45. E. 3. 16. 14. H. 6. 10. a. 16. H. 7. 13. a.

F. Nat. 112. F. 216. Dr. Stu. 71. 8. Co. 88. 17. E. 3. 15. b. 558.

Co. Magn. Chart. 523.

becauſe it is not iſſuable. The ſeiſin of the ſtranger at the time of the fine is not material nor of ſubſtance, but form of pleading * &c. And alſo *darrein ſeiſin* in *formedon*, or writ of right, is no plea to the action of the writ, as in actions anceſtrel poſſeſſory, as *coſinage*, *aiel* &c. but the title of the demandant here is the gift, and not the ſeiſin of the anceſtor, and need not be brought of a ſeiſin within fifty years according to the ſtatute of limitations; Wherefore &c. (65) And it was holden by DYER, that the ancient courſe of pleading a fine was not to allege a ſeiſin in the parties to the fine, or any of them; but generally that the fine was levied, for it may be of a reverſion of which no ſeiſin could have been well alleged. And always ſince the ſtatute, 1. *R.* 3. [c. 1.] of uſes, fines have been levied by the *ceſtuis que uſe* &c. and as ſtrong as if they had been of poſſeſſions and ſeiſins, and confirmed by ſtatute 32. *H.* 8. [c. 36.] that a fine with proclamations according to the form of the ſtatute, 4 *H.* 7. [c. 24.] by tenant in tail in uſe, ſhould be a bar to the entail. And the exception to the fine, which is in the ſaving of the ſaid ſtatute, which adds to and enlarges the ancient challenge or exception of a ſtranger to the fine, proves the ancient form of pleading in the fine as above, that is to ſay, *which fine indeed was levied* without any ſeiſin pleaded in the parties to the fine at the time of the levying thereof; and therefore the addition in the exception, *s.* "*nor* "*any perſon or perſons ſeiſed to their uſe*," was given by 4. *H.* 7. Yet for fines of ancient times, *s.* before 4. *H.* 7. the exception *quod partes ad finem nec earum aliquis nihil habuerunt* &c. remains ſtill at common law; which the other Juſtices agreed to. And although the fine above was levied after 5. *H.* 7. yet as the tenant hath pleaded it with expreſs ſeiſin in the conuſors at the time of the fine levied, the general exception as above is good enough.

(66) The rejoinder by the opinion of ALL the JUSTICES was a departure from the bar, for it is ſupported by a ſtatute made in later times, and in a manner falſifies the bar, in which expreſs ſeiſin was alleged in the conuſors at the time of the fine levied; and alſo execution thereof in the conuſees, by virtue of the fine, which cannot be verified by the uſe: but this ought to have been ſhewn before in the bar, according to 3. *H.* 7. [5. a pl. 18. of a gift

40. E. 3. 8. 27. E. 3. 81. b. 11. H. 7. 3. b. 11. H. 6. 20 19. E. 4. 3. 20. H. 7. Cro. 56. N. B. 121. n. Dy. 278. 4. Co. 11. 32. H. 8. c. 2. Limita. 3. 27. H. 8 4. 1.

Raſ. Fines 9. 1. R. 3. pl. 13. 27. H. 8. 20. b. Dy. 88. 312;

4. El. 215. b. Raſ. Fines 8.

21. H. 7. 25. Plow. 105. b. [Raym. 22.]

36. H. 6. replication 21. 1. E. 4. 5. 11. H. 7. 28. b. 18. E. 4. 28. b. 7. H. 7. 2. 42. E. 3. 5. 48. E. 3. 11. 12. E. 4. 21. Plow. 15. a. 12. H. 7. Cro. 123. 175.

a gift in tail pleaded in bar, and maintained by rejoinder with an *iſſint dona*; otherwiſe it is of a gift in tail ſuppoſed by the writ and count, and the gift traverſed, where the demandant by replication maintained the count by an *iſſint dona*, as 27. *H.* 8. [3. b. pl. 11.] in a writ of ward [forfeiture of marriage] for the heir of a *ceſtuy que uſe*, becauſe no other form of writ is given &c. [67] Joint-tenancy by fine pleaded, ſhall abate the writ immediately if the demandant cannot confeſs and avoid it; for he ſhall not have a direct averment that he is ſole tenant againſt the fine, which is matter of record. And 15. *E.* 3. [*Fitz. Ab.* tit. *Maintenance de Briefe* 55] the writ *ipſo facto* ſhall abate: but ſee 15. *H.* 6. in *Statham*, a diverſity in pleading it. But by ALL the JUDGES, joint-tenure of parcel ſhall not abate the entire writ * but for the reſidue it ſhall ſtand; and this by many books; ſee thereof *ante* [31. bl. pl. 216.]. And although the demand here be of an entire thing, as of a manor, yet it is otherwiſe of non-tenure of parcel of an entire demand at this day; becauſe there the writ ought to have an exception, but of a jointenancy there ſhould be no exception, nor of one moiety of a parcel as above: and here the joint-tenancy is pleaded in abatement of the writ, after voucher and a bar pleaded, which affirms the writ to be good; which is diſorderly and prepoſterous, and therefore the Court ought not to regard it &c. Alſo it ſeems that the tenant is eſtopped from pleading joint-tenancy in the exception of one moiety, for by the voucher for one moiety before, he admits no exception in that moiety; and the exception of any parcel of a moiety goes to the entire manor and to every part, ſo he ought to have made the exception as well in one moiety as in the other, 19. *E.* 2. [*Fitz. Ab.* tit. *Briefe* 845.] 4. [*E.* 3. 3. b. pl. 4.] & † 14. *E.* 3. *vide*. And afterwards, as to the moiety whereof the tenant had vouched, and the voucher counterpleaded, which is inſufficient, judgment was given that the voucher ſhould ſtand. And as to the other moiety (except the exception of which joint-tenancy was pleaded by fine to the country) the judgment was, that the demandant ſhould recover ſeiſin thereof.

40. E. 3. 30. a. 14. H. 4. 31. 6. b. F. Jointenancy 18. 22. E. 3. 6. 12. E. 3. maintenance de breve 56. 13. E. 3. Vouch. 119. 20. H. 7. Cro. 66. 32. E. 3. Vouch. 96. 24. E. 3. 36. 2. E. 3 5 41. E. 3. 20. 43. Aſſ. 6. Plow Manxell's caſe 3. Cro. 739. [Booth real act 31.]

* [291. b.]

20. H. 7. Cro. 56. Plow. 109. 205. 7. R. 2. Joynture 8. Dier. 39. 216. 5. H. 7. 7. [1. Mod. 181. Com. dig. Abatement (F. 14.)] 12. H. 7. 14. b. Co. 10. E. 4. 2. 1 Leo. 77. [15. Vin. Ab. 183. pl. 18.] Goldſ. 85.

(68) And

11. Co. 39. b. 17. E. 3. 5. 31. Dy. 284. 39. H. 6. Error 40. 32. H. 6. 5. a. 11. Co. 35. 36. H. 6. Scire facias 33 the caſe intended F. Error 25. Fieri facias 11. 19. H. 6. 71. Pal. 6.

[2. Bac. Ab 193. Vin. Ab. Error M.]

(68) And afterwards the tenant brought a general writ of error before the diſcuſſion in trial of the joint-tenancy: and he vehemently prayed that the record might be removed into *B. R*; but the Court would not agree to that before the whole matter of the demand be determined, for otherwiſe they would proceed in the plea without warranty. And alſo the writ of error ſays, *quod ſi judicium inde redditum ſit* &c. and this word *inde* goes to the entire demand &c. And it agrees with *E.* 33. *H.* 6. [22. b.] & *E.* 54. [41. a.] in the end of a long *quare impedit*, and *E.* 26. *H.* 6. in title *fieri facias* in *Fitzherbert*, [pl. 3. in a *præcipe quod reddat* of land and rent, where judgment of the land and damages for it, but not for coſts, was given; but for the rent the plea was not determined: and therefore the whole record could not be removed. Otherwiſe of two ſeveral *præcipes* and ſeveral counts and pleas: and yet peradventure a ſpecial writ of error might ſerve in the caſe of a *præcipe* of land and rent; therefore *quære* thereof in the caſe above? Accord' *T.* 7. *R.* 2. [*Fitz. Error*, 68.] where aid prayer may not be reverſed for error before that the principal plea be de-

[11. Co. 41. a.]

2. Ro. Rep. 125, 126.

17. E. 3. 5. Error 7. 21. E. 3. 29. 22. E. 3. b. darraine preſent 1.

termined;

(68) *M.* 17. Jac. *B. R.* The Lord the King againſt the fraternity of *Dublin* [Palm. 1. 2. Rol. rep. 113. 125.] Error brought upon a judgment given in a *quo warranto* in *B. R.* in *Ireland*; and the judgment was given as to ſome liberties that they ſhould be ſeized into the King's hands, and that the defendant *capiatur*: and as to the other liberties no judgment, but *curia advi-ſare vult*. And now Whether this record may be removed before that the entire matter be adjudged, is the queſtion; or Whether the whole cauſe ought to be determined before the writ of error ought to be brought? And it was adjudged, that the writ of error was well brought, for the judgment is *quod capiatur pro fine*, by which they ſhall be impriſoned; and if they ſhall not have a writ of error, they will be without remedy: and afterwards a *fieri facias* was awarded.

40. *Eliz. B. R.* † *Bill* v. *Mathews*, in account judgment was given that he ſhould account, no error lies until audit determined. [See Cro. Jac. 356.] ſo in the caſe of partition before the laſt judgment, as was adjudged in the Counteſs of *Warwick*'s caſe. So [1. Leon. 193.] before writ of enquiry of damages be returned, notwithſtanding the firſt judgment given; for the record is not perfect before judgment given of damages, as was adjudged between † *Preſton* and *Collis*, 30. *El. B. R.*

M. 40, 41. *Eliz.* Counteſs of *Warwick*'s caſe againſt Lord *Barkley*. [Cro. *Eliz.* 635. 643. Noy. 71. Mo. 643.] in partition, after judgment that partition ſhould be made, and before the judgment is complete, error was brought, and doubted alſo; and there POPHAM took the diſtinction, where the ſecond judgment is only matter of office there error lies otherwiſe, if it be an act of court, as upon a writ of enquiry of damages there it lies, for all is aſſeſſed by the jury, otherwiſe where the court is to do any thing (*viz.*) to aſſeſs coſts &c. and this he ſaid would reconcile the books. And afterwards at *Weſtm.* in Term in the ſame caſe, TANFIELD put a difference, *1.* where judgment is given for the principal, *2.* upon demurrer in aſſiſe, *ejectione firmæ*, &c. there error lies before judgment given for damages which are acceſſory; but otherwiſe in treſpaſs where damages are the principal. And this diſtinction was confirmed by POPHAM, but FENNER *contra*; *3.* That error does not lie until the plea determined; as upon award to account: to which POPHAM anſwered, Where judgment is given of the principal, as far as relates to that, the plea is determined; but upon an award to account, nothing is determined.

termined; in a note. See *E.* 17. *E.* 3. [32. b.] in *darrein preſentment contra.* (*a*)

(*a*) In the MS. in the *Inner Temple* Library, there is ſome further account of this caſe, as to other points, as follows: "YORKE. "*Fitzwilliam* brought a *poſt diſſeiſin* againſt "*Copley* for the moiety of the manor of *S.* in "the county aforeſaid (except the exception "mentioned in a caſe above) [Supra, 290. "b. pl. 6.] wherein judgment was given "againſt the tenant upon a demurrer in "law. And it was doubted, Whether this "writ might be judicial, *i.* made and return-"ed in the Bench, or ſhould be original out "of Chancery? But it was holden, that the "tenor of the writ which ſays *monſtravit* "*nobis* &c in the ſame manner as in rediſ-"ſeiſin, [F. N. B. 439, 440.] and alſo the "ſtatutes of *Merton*, c. 3. and *Weſt.* 2. c 26.] "prove, that the complaint of this injury "ought to be made to the † Queen in the "original Court. And alſo that the ſheriff "himſelf ought to be in perſon at the execu-"tion of the writ, and ſit as judge there, "and not his under-ſheriff; as was in this "caſe."

† Orig *al Wymes.*

(69) A MAN ſeiſed in fee-ſimple of copyhold and cuſtomary land, had iſſue two daughters by different venters, and died ſeiſed thereof; the daughters entered, and took the profits of it for ſeveral years, without any admittance, or taking of it in the court of the Lord. The eldeſt daughter died without iſſue; and afterwards the youngeſt is admitted to the whole as ſole heir to the father. Whether the next heir of the whole blood to the eldeſt daughter ſhall have the moiety? And by the opinion of WELSH and DYER Juſtices, the poſſeſſion aforeſaid, without any admittance, is * ſufficient in law to make the collateral heir inheritable &c.: and it was ordered by the Lord Keeper accordingly. A ſimilar caſe happened in *E.* 14. of the preſent Queen, which was, That a copyholder had iſſue a daughter by one venter, and afterwards a ſon by another venter, and died, the ſon within age; the lord of the manor committed the cuſtody of the land during the non-age to the mother of the ſon, who entered: and afterwards the ſon within age died without any admittance of him as heir, *s.* by paying fine or doing fealty. And the daughter, who is his ſiſter of the half blood, prayed to be admitted: but by the opinion of CATLYN and DYER, to whom the queſtion was referred, ſhe ſhall not be admitted; becauſe the poſſeſſion of the mother, as guardian, gave actual poſſeſſion to the ſon.

A copyholder dies, leaving two daughters by different venters, who enter; the eldeſt dies before admittance, yet her poſſeſſion was ſufficient to entitle her collateral heir.

So poſſeſſion by guardian to whom cuſtody is committed during minority, if the infant die before admittance, will entitle his heir.

4. Co. 21. a. 22. 23. Kitchen 87. 117. 1. Ro. Ab. 502.

* [292. a.]

Co. 4. 22. Mo. 597.

Dy. 302. pl. 46. 55. *E.* 3 26. a 3. Bullt. 238. 1. *E.* 4. 9. 1. H. 7. 18. 14. *E.* 4. 14. 27. H. 8. 7. 48. *E.* 3. 16. a. 8. Aſſ. 6. Kitchen 127. N. B. 145. 2. *E.* 4. 5. 6 5. *E.* 4. 7. b. 3. Co. 42. 1. Ro. Ab. 502. 1. Inſt. 15. a.

[1. Bul. 42. 2. Lev. 107. Lex Cuſtumaria 156, 157, and ſee *Goodtitle* v. *Newman* 3. Wilſ 5. 6. 2. Black. 938. 4. Term Rep. 198.]

(69) 23. *El.* rot. 1229. [Mo. 125. pl. 272.] Between *Holmes* and *Facie*, it was adjudged that the poſſeſſion of the termor ſhall be the poſſeſſion of the heir, and that it ſhall be the poſſeſſion of the brother without admittance, for the ſeiſin given to his anceſtors ſufficeth for him and all his heirs; but he is no tenant to the Lord until admitted, nor is a purchaſer ſeiſed till admittance.

(70) THE

The King during the vacancy of the ſee preſents A. to a prebend, but repeals his preſentation, yet the Dean and Chapter inſtall him, and the King ratifies it; on the death of *A.* tho'the ſee be full, the King may preſent again, for his confirmation was void. But *quære*, if the Dean and Chapter muſt not have notice of the repeal.

38. H. 6. 15. 10. H. 4. 3. 18. E. 3. 21. 9. H 6. 21. 15. El. 327. a. 11. H. 4. 75. 1. Inſt. 344. b. Qu. Imp. 16. 31. E. 3. Qua Imp. 161. 2. Ro Ab. 188, 353. 4. 351. 9. E. 3. 20. b. 10. E. 3. 39. 7 Co. 28. 44. E 3. 17. b. 11. E. 4. 1. b. Dy. 263. Ro. Ab. 157. N B. 34. f. 44. E. 3. 35 b. 21. H. 6. 28. 39. Aſſ. 9 39. Aſſ. 8. 38. H. 8. 15. 7. H. 4. 13, 32. 20. H. 6. 13. 14. E. 3. Qua. Imp. 5. 38. E 3. 4. a Dy. 327, 339. 18. E. 4. 2. 14. E. 4. 2 b. 38. E 3. 36. b. Dy. 334. Lit. 191, 253 Lane 2 Noy 91. 2. Bulſt. 188.

[Wats. Clerg. Law 223. 224, 225. 1. Leon. 156. 3. Mod. Ent. 84, 85, 86.]

[2. Black. 1040.]

(70) THE King preſented to a void prebend, by reaſon of the temporalities of a Biſhop, the ſee being vacant; and before inſtitution the King repealed his preſentation; and notwithſtanding this, the preſentee afterwards is inſtituted and inſtalled by the Dean and Chapter, being guardians of the ſpiritualities during the vacancy of the ſee: and afterwards the King reciting that the preſentee was in, canonically inſtituted of his preſentation, ratified and confirmed the preſentation; and he died incumbent. And in the mean time a Biſhop is created, the King ſhall have the preſentation over again, notwithſtanding his confirmation, *T.* 25. *E.* 3. fo. 47. [90. a. pl. 35.] becauſe he was not in of the King's preſentation, and by conſequence the confirmation void &c. and ſo judgment was given for the King, as it is ſaid. *Quære*, Whether he ought not to allege that the repeal was brought and ſhewn to the guardians of the ſpiritualities before the inſtitution &c. ſo that they had notice of the repeal as of a new commiſſion &c. And ſuch a repeal is alſo called a revocation, and is directed by the *Regiſter*, fol. 304 and 305. to him to whom the preſentation was directed, with a *ſignificamus vobis* &c. that he expreſsly hath revoked his former preſentation. See in *quare impedit Fitz. T.* 31. *E.* 1. 185. that a lay-patron may not change his preſentation any more than a ſpiritual one may. See for a revocation, *H.* 18. fol. 348. [a. pl. 12. poſt.] and for a preſentation changed by the King.

(70) *M* 8. Jac. *C. B. Calvert* v. *Kitchen.* [Lane, 71. 100.] adjudged, That if the Queen after preſentation, and before induction die, preſentation made by the ſucceſſor is good, without making mention of the firſt preſentation.

When office finds tenure of the King, *ſed per quæ ſervitia* the jurors know not, and a *melius inquirendum* therefore awarded, the firſt office needs not be traverſed, it is wholly void.

[See] Co. Lit. 77. b. Ley Rep. 25. Dy. 155. b 248. 305 B N C 141. Hob. 50. 5. Mar. 141. b. 8. Co. 168. b. adjudged there 2. Inſt. 690. Raſ. Eſcheat 19.

[2. Bl. Com. 18. 3 Bl. Com. 258. 12. Car. 2 c. 4]

(71) IT is found by office by a *diem clauſit extremum*, that the lands were holden of the Lady the Queen, but by what ſervices the jury know not; whereupon a *melius inquirendum* was awarded, by which the tenure was found to be of a ſubject, and all other points found in certain. Whether the firſt office remaining in force ought to be traverſed by the party, or not? And it ſeemed by the opinion of the Counſel of the Court of Wards, that there needs not any traverſe; but the firſt office is wholly void; and the *melius inquirendum* is in the nature of

of the firſt writ of *diem clauſit extremum*; and this by the ſenſe of the ſtatute 2. and 3. *E.* 6. c. 8.

Norris's Caſe, and Campian's Caſe.

(72) THE pariſh of *Hurſt*, extends into the counties of *Berks* and *Wilts*, being adjoining; within which pariſh is a cloſe of paſture * and meadow, called *Calleys*, lying in the county of *Wilts*; and a leaſe was made thereof for a term of years by indenture, by Sir *Jo. Norris*, to one *Thomas Gouеld*, by the name of *his paſture and meadow, called Calleys, in the pariſh of Hurſt, within the county of Berks*; which *Calleys*, in truth, is in the county of *Wilts* &c. Whether it ſhall paſs or not? And by the report of SAUNDERS, Chief Baron, the leaſe was holden in the Exchequer to be good, and ſo ruled on great deliberation and adviſement: and not like a caſe in the Court of Wards, *H.* 16. of the preſent Queen, which was, that one *Campian* by deed enrolled, bargained and ſold a houſe in the pariſh of *St. Botolph*, without *Biſhopſgate*, being in the tenure of one *Williams*, by the name of his houſe in the pariſh of *St. Botolph*, without *Aldgate*, in the tenure of *Williams*; † that is extremely difficult to make the purchaſe good, becauſe the thing aliened hath no name except the name of the pariſh, which is miſtaken. Note, That there are four pariſhes of *St. Botolph in London*, *s.* without *Aldgate*, *Biſhopſgate*, *Alderſgate*, and *Billingſgate*. See this again *E.* 18. of the preſent Queen, fo.

The pariſh of *H.* extending into two counties of *B.* and *W.* leaſe of a cloſe, by name of *C* in the pariſh of *H.* in the county of *B* tho' in fact the cloſe was in *W.* is good But where the name of the pariſh itſelf is miſtaken, the leaſe is bad [14 Vin. Ab. 100.] Dy. 246. pl 72. 7. E. 6. 80 b. 3. Co. 10. a. 24. b. 7. H 4. 41. 2. E. 4 28. a. 9 H. 6. 12. 53. 38. H. 8. 50. b. 1. Cro. 473. 2. E. 4. 27. b. Co. 2. 33. a. Dy. 376. 20 Aſſ 8. 26. Aſſ. 38. [Shep. Touch. 246. Bac. Ab. Grants H.]

(72) *Eaſt.* 3. Jac. Between † *Skipwith* and *Ellis*, and others, upon evidence to the jury it was holden by the Court, That if a man bargain and ſell his manor of *Grandſin*, in the county of *Oxon.* whereas he hath not any manor there, but in the county of *Cambridge*, it ſhall not paſs; otherwiſe if livery hath been made.

† *Eaſt* 15. *El.* MANWOOD thought contrary to DYER in this caſe, that the houſe would paſs well enough, notwithſtanding this incorrect calling of the pariſh; for there is a ſufficient certainty in the commencement.

Michaelmas Term,

12. and 13. Queen Elizabeth.

Bedinfield *againſt* the Archbiſhop of Canterbury and Pickering, Clerk.

Tho' the preſentee to a church be a mere layman, ſtill if admitted, inſtituted, and inducted, there muſt be a ſentence of nullity before any other preſentation, and the ordinary muſt give notice to the patron of ſuch ſentence before any lapſe can incur. [Co. Ent. 507. b.] [Bend, 195.] S.C. 1. And. 16. 14. H. 7. 21. & 28. 4. Co. 75. 5. Co. 58. 6. Co. 49. b. 5. Co. 102. Finch. 144. Hob. 148. 15. Jac. Cro. 463. Gouldſb. 35. 52.

(1) A Lay-patron preſented to a church vacant by death, a man, as if a clerk, but in truth a mere layman, who by the eccleſiaſtical law is not *capax beneficii*, and yet he was preſented, admitted, and inſtituted by the ordinary of the place: and after a year from the time of the death of the laſt incumbent (no ſentence of deprivation being brought forward) the metropolitan collated his clerk to the church, devolved to him by lapſe, without any notice of the incapacity aforeſaid, or of the eccleſiaſtical law in this caſe, previouſly given to the patron. Whether this clerk ſhall continue to enjoy that benefice or not? And this caſe appeared in *quare impedit*, brought by *Bedinfield*, Eſq. againſt the Archbiſhop of *C.* and *Pickering*, in which the patron counts for title to preſent on a vacancy of the church by the deprivation of his ſaid preſentee, canonically deprived; which was not denied by the anſwer of *Pickering* the incumbent; but the caſe is as above ſet forth. And in the caſe aboveſaid, the definitive ſentence was pronounced in the Court of Audience of the Archbiſhop aforeſaid by Dr. *Yale*, auditor of the cauſes in *Canterbury*, for *Pickering* as the true and lawful rector and poſſeſſor of the church aforeſaid; and that *Townſend* the layman had no lawful right, title, [* 293. a.] or * intereſt in the ſame; nor could he by any means have; but therein impoſed perpetual ſilence upon him. And this ſentence was afterwards confirmed by argument in the Bench this Term, by three Doctors, *ſ. Dale*, *Foorde*, and *Barkeley*, thither convened by the decree and order of

(1) *Ceſterd* againſt one *Wyndett*. [Cro. El. 775. Mo. 606.] A layman is preſented &c and makes a leaſe for years (which is confirmed by the patron and ordinary) and afterwards is deprived by ſentence declaratory, yet the leaſe is not void, but good: for when he made the leaſe he was parſon *de facto*, and the deprivation ſhall not have ſuch relation as to make him no parſon *ab initio*, although it be but declaratory; for the ſucceſſor ſhall not have meſne profits This caſe was *Trin.* 48 *Eliz. B R.* and entered *E.* 42. *El. rot.* 127. [See 3. Bac. Ab. 366.]

the

the Judges there; and that *Townſend*, on account of his in-idoniety and incapacity aforeſaid, never was rector, neither *de jure* nor *de facto*; and that the Biſhop is not bound to notify a defect of this nature to the patron, becauſe it is notorious and *ignorantia juris neminem excuſat.* But other doctors afterwards denied this, and alleged that the opinion of LINDWOOD who was *juriſperitus*, and ſkilled in the eccleſiaſtical law of this kingdom, was, that the patron ought to have notice of this ſort of incapacity. And ſee *M.* 7. *H.* 6. *rot.* 523. that a mere ſpurious or baſtard, who is incompetent and incapable of a benefice with cure by the eccleſiaſtical law without an apoſtolic diſpenſation, was preſented, admitted, and inducted, and as parſon *imparſonee* continued in the church of *Hengham*, in the county of *Norfolk*, for thirty years and upwards: and one as couſin and heir of the patron who preſented him, brought a *quare impedit* againſt the baſtard himſelf, who as incumbent pleaded to an iſſue of the country, which was, Whether the patron who preſented, and the Biſhop who admitted him, knew the whole matter above at the time of the preſentation and admiſſion, as he the baſtard had in pleading alleged or not; becauſe if they had known &c. then the incumbent ſhould not be removed at the ſuit of the heir of the patron by *quare impedit*, as it ſeems by that plea. And by the opinion of Dr. LEWIS, Judge of the Admiralty, declared in writing, *Townſend* was incumbent *de facto*, though not *de jure*, through an error of the Biſhop; and therefore he muſt be deprived by ſentence declaratory before the church can be adjudged void, and thereof the lay-patron muſt have notice.

8. E. 4. 2. a. 22. H. 6. 26. 11. H. 7. 12. a. 8. Co. 101. a. 5. H. 7. 20. 5. Co. 58.

6. Co. 49. b. 30. a. 5. Co. 102. a. 14 H. 7. 21. a. 11. H. 7. 9. 12. H. 8. 6. 9. E. 4. 24. Dy. 346. [Wats. Clerg. Law 31. 49. 50.]

(3) And afterwards, in *Hilary* 13th, it was argued at the bar, and exception taken to the count, for that it doth not ſhew where or before what eccleſiaſtical judge the deprivation was, *et non allocatur*; but if it be denied, the plaintiff as to that afterwards may well nevertheleſs ſhew it, by having a writ to the Biſhop to try the deprivation &c. But there were three objections to the bar. 1ſt, Becauſe the defendant ſays *actio non* before he enables himſelf to plead in bar, *s.* by ſhewing how he was incumbent and poſſeſſor according to ſtatute 25. *E.* 3. which ought to be firſt ſhewn; and then he ſhould ſay *actio non, becauſe he ſaith* &c. Alſo when he hath ſhewn the

In pleading a ſentence of deprivation, it is not neceſſary to ſhew before what judge it was given

5. E. 4 3. 3. E. 4. 12. Dy. 283. pl. 28. Dy. 2. b. 7. Co. 26.

Raſ. Advowſon 33.

the avoidance of the church before the preſentment of *T.* who was a mere laic, by the death of one *Ikyn*, he acknowledges the preſentation by the plaintiff of *Townſend* to the Biſhop, and his admiſſion and inſtitution by the Biſhop, *per quod eccleſia illa remanſit vacua de jure* &c. which is repugnant and abſurd &c. Alſo no anſwer is made by the traverſe or confeſſion and avoidance of the ſaid canonical deprivation &c. which ought to be: but he ought to have pleaded the ſentence of nullity which was given in the Court of the Archbiſhop againſt *T*, and have concluded his plea with a *which is the ſame deprivation* * *whereof the plaintiff counteth* &c. and then the matter in law, *ſ.* whether the metropolitan or ordinary ought to give notice to the lay-patron of the incapacity of *T*, and of his deprivation, for that he was a mere laic &c. might have well come in queſtion. And 38. *E.* 3. [2. a.] The Biſhop refuſed the preſentee of the Earl of *Arundel*, becauſe he was perjured by his own confeſſion before the ſame Biſhop in a cauſe between the Biſhop and his Chapter (but thereof there was no conviction) and ſent notice thereof by the ſame preſentee to the patron, and iſſue was taken upon the confeſſion &c. "*De idonietate* "*perſonæ preſentatæ ad beneficium eccleſiaſticum pertinet exami-*"*natio ad judicem eccleſiaſticum. Articuli Cleri*, [9. *E.* 2. ſt. 1. c. 13.] *Fitzherb. titulo Quare Impedit* in *Naturâ Brevium*, [fol. 83.] ſays, Where the biſhop refuſes the patron's clerk for non-ability, or for crime, he ought to give notice thereof to the patron, or otherwiſe he ſhall not have advantage of the lapſe. And afterwards HARPER, WELSHE, and DYER, argued at the Bench, and all agreed, that the plea was not good for the cauſes aforeſaid. Alſo it does not ſhew expreſsly the title that the metropolitan has to collate by lapſe &c. And for the matter in law they all argued, that by the admiſſion and inſtitution of *T.* the church was full of an incumbent to all intents by all laws, and in the intendment of the law of the realm; and then if it was a plenarty until ſentence of deprivation or nullity, or declaratory ſentence be given againſt this incumbent, he remains incumbent in our law. Then by the ſentence, there commenced a new avoidance, and conſequently a new title to the patron to preſent. And of this avoidance to which the metropolitan was

3. Keb. 827.

* [293. b.]

Gouldſ. 35. 2. Ro. Ab. 356. Qua. Imp. 2. 5. Cp. 58.

22. E. 4. 28. 14. H. 7. 21. 5. E. 4. 3. 22. H. 6. 26.

8. E. 4. 2. a.

3. Cro. 775. Mo. 606. 228. [Wats. Clerg. Law 31. 49, 50.]

5. Co. 102. Dier 353. 13. El. c. 12. where the admittance of one who is not Deacon, is void in law 2. Ro. Rep. 7. 1. Ro. 476. 2. Ro. 220.

privy

privy (by his officer or commiſſary who gave ſentence of this nullity by the authority of the metropolitan) he ought to give notice to the patron, or otherwiſe he ſhall not have benefit of the lapſe &c. and ſo of reſignation, or ſuch like caſe where the Biſhop is privy, or party to the cauſe of the avoidance &c. And ſo they all concluded againſt the defendant, and that the plaintiff ought to have a writ to the Biſhop &c. to which WESTON alſo afterwards agreed. And ſo it was adjudged. And the plaintiff remitted the damages.

[See 13. El. c. 12. § 8.] [Wats. Cl. L. 29. Gibſ. 823.] 5. 22. E. 4. 3. 28. 16. El. 327. b. 5. E. 4. 116. 1. H 7. 9 21. E 4.28. Dr. Stu. 116. Dy 294. 18. H. 7. Kell. 49. B. N. C. 504.

Walrond *againſt* Pollard.

(4) JOHN GOODMAN, Clerk, being Prebendary of the prebend of *Currey*, in the cathedral church of *Wells*, by his deed enrolled in the Chancery, bearing date the twenty-firſt day of *November* in the firſt year of the reign of King *E.* 6. gave, granted, rendered, and confirmed to the ſaid King by the name of *Ed.* 6. *ſ. Edwardo ſexto Angliæ Franciæ & Hiberniæ regi, fidei defenſori, & in terram eccleſiæ Anglicanæ & Hibernicæ ſupremo capiti totam prebendam ſuam de Currey in comitatu Somerſet, ac omnia maneria, terras, tenementa, proficua, poſſeſſiones, jura et hæreditamenta quæcunque, tam ſpiritualia quam temporalia, ac omnem et omnimodam plenam et liberam facultatem, diſpoſitionem, auctoritatem, et* * *poteſtatem dictæ prebendæ pertinentem, ſpectantem, appendentem, ſive incumbentem aut ut parcellam &c. habendum et tenendum eidem Regi hæredibus et ſucceſſoribus ſuis ad eorum proprium uſum imperpetuum ad omnem juris effectum &c.* with a clauſe of warranty for himſelf and his ſucceſſors againſt all perſons. (5) Afterwards (by act of parliament commenced the 4th day of *November*, and finiſhing the firſt ſeſſion thereof on the 24th day of *December*, in the ſaid firſt year of King *Ed.* 3.) the ancient deanery of *Wells* was utterly diſſolved and extinguiſhed, and a new deanery erected, and the nomination and patronage of the new Deans for the time being, appointed to the King, his heirs and ſucceſſors; and that all lands, poſſeſſions, and hereditaments, as well ſpiritual as temporal, and alſo quotidians and dividends belonging to the ſaid Prebend of *Currey*, ſhould go and be to the Dean for the time being, and to

A prebendary gives, grants, renders, and confirms to the King, "*totam ſuam prebendam de C. et terras et poſſeſſiones, et omnem auctoritatem et poteſtatem &c. dictæ prebendæ ſpectantem &c. cui omnia jura &c. ut decet ſubjicio et ſubmitto.*" This is a good reſignation to the ſupreme head of the church, who may accept it as well as the immediate ordinary, tho' as King he needs not give notice thereof to the parties. Dy. 175. 273.

* [294. a.]

to his ſucceſſors for ever, with a general ſaving of the rights of every man &c. except the Biſhop of *Bath* and the Prebendary of *Currey*, and their ſucceſſors &c. and after this act paſſed, *s.* on the 7th day of *January*, in the firſt year aforeſaid, *Goodman* was made Dean by the King's letters patent, and after this obtained the Prebend of *Wyvelſcombe*, in the ſaid church; wherefore he was afterwards deprived of his Deanery and Prebend of *Currey*, as having two dignities and promotions in one and the ſame church. Now, Whether by virtue of this deed and grant of *Goodman* made to the King of the ſaid Prebend of *Currey*, and the act aforeſaid, or either of them, the prebend and the function, and canonry thereof was fully diſſolved, extinct, or determined, or his right given or reſigned, or not, was the queſtion between the parties in treſpaſs. In which, on not guilty pleaded, the ſpecial matter above of the deed and act of parliament was found by the verdict. And ſix Doctors (Civilians) ably debated the caſe in the common bench *pro* and *contra*; and by them all agreed that the Prebend could not paſs to the King as a grant of it; but if it hath gone out of *Goodman*, it was by reſignation only, which (they agreed) might well have been made to the ſupreme ordinary, viz. *Supremo capiti eccleſiæ*, as well as to the immediate ordinary of whoſe gift and collation he took it. (6) But whether the words of the deed are ſufficient in law to reſign *canoniam ſive canonicatum*, without expreſs mention that it is the ſpirituality, and moſt worthy part of the prebend and promotion, and was and might be before the Prebend, being the lay part, and given only as a reward for the function of the other, they differed: yet they all agreed that *reſignare* is not a term of law, but *renunciare*, *cedere*, and *dimittere* are the uſual terms of reſignation. Note alſo in this deed the words "*Animo deliberato, certâ ſcientâ et mero metu ex qui-*" "*buſdam cauſis, juſtis, et rationabilibus ſpecialiter moventibus*" "*ultro et ſponte dediſſe*" &c. and after the *habendum* &c. theſe words to the King, "*cui in hâc parte ad omnem juris*

Dy. 273. pl. 35.

1. Sid. 389.

[Wats. Cler. L. 29. 3. Burn. Ecc. L. 298. 3. Mod. Ent. 100 101.] Co. Lit. 344. 2. Ro. Ab. 358. Rol. contin. 453. 19. H. 6. 35.

(6) *Hil.* 20. *Jac. B. R.* [Cro. Jac. 63. Yelv. 60 1. Brownl. 201.] *Fairebild* v. *Gair*, Civilians, hold that reſign is not a good word of reſignation; but the Judges *contra*.

Br. Clergie. 19. If a Biſhop offend, and have his clergy, the metropolitan ſhall keep him as his ordinary; and if the metropolitan offend, and have his clergy, the King ſhall have and keep him.

[Plow.] Com. 498. b. *Grendon*'s caſe, the King preſents by lapſe as a ſupreme patron, and not as ordinary.

"*effectum*

" *effectum qui exinde* * *ſequi poterit aut poteſt dictæ prebendæ* " *ac omnia jura mihi ratione ejuſdem qualitercunque acquiſita* " *ut decet ſubjicio et ſubmitto*" *&c.* which words ſeemed to the greater part of the Juſtices ſufficient, and amounting to reſignation. But HARPER and WESTON thought that it ought to have been made to the immediate ordinary of the dioceſe, and not to any ſuperior ordinary, becauſe the King is not bound to give notice to the patron of the reſignation as the ordinary is, nor can collate of himſelf without preſentation to the Biſhop, notwithſtanding the ſupremacy. Therefore *quære* well thereof. " *Et canonia* " *definitur eſſe jus quod provenit ex electione et receptione in* " *fratrem, vel eſt jus percipiendi fructum prebendæ &c. in voca-* " *bulario utriuſque juris.*" But ſuch an election of a prebendary to be inſtituted is not uſed in *England*, as I believe. And afterwards, at the end of *Hilary* Term, in the 14th year of the now Queen, with the aſſent of HARPER and WESTON, judgment was given for *Walrond s.* " *nihil amplius dici poſſet in contrarium circa menſem Paſchæ* " *proximæ.*"

Plow. 498. 2. Ro. Rep. 98. 18. El. 348. a. Dy. 293. the hiſtory of Tithes 378

Mannocke's Caſe.

(7) THE widow of an inteſtate obtained adminiſtration of the goods and chattels of the deceaſed from the Commiſſary of the ordinary by parol only, taking an oath of adminiſtration from the commiſſary; which thing is entered in the Regiſter of the acts of the commiſſary, but no letters of adminiſtration made either in the name of the commiſſary or of the ordinary. *Quære*, of right in what name they ought to have been made? And by this only authority, the widow as adminiſtratrix ſold the goods, and died; and afterwards a new adminiſtration is committed to the ſon of the deceaſed inteſtate by letters of the ordinary, who brought an action for the goods; and the firſt commiſſion pleaded, and an iſſue joined, whether adminiſtration was ever committed to the aforeſaid relict of the inteſtate by the commiſſary, or not. *Quære* well, Whether the matter above will ſupport and maintain this iſſue for the vendee, or not; for opinions differ. But the iſſue was joined between the parties, that adminiſtration

Whether letters of adminiſtration muſt be in the name of the ordinary, or may be in that of his commiſſary. Whether adminiſtration committed by parol only be good—*qu.* Adminiſtration may be pleaded generally without ſhewing who committed it. 21. H. 6. 23. b. 10. E. 4. 1. 9. H. 5. 5. 8. Co. 135. 7. E 4. 14. 11. H. 4. 64. 41. E. 3. Adminiſt. 18. 22. H. 6. 25. Plow. 276. 9. E. 4. 14. Dy. 265. [Com. Dig. Adminiſtrator (B. 2.) 2. Bac. Ab. 402.]

[Godolph. 231. See 1. Show. 406.]

9. Co 31. a. 41. a. 76. Liver Entries 301. Dy. 256. 339.

ſtration was not committed by *Nich.* late Biſhop of *London* &c. in manner &c. And, on the Biſhop's Regiſter (of the time of this Biſhop) being ſearched, no adminiſtration could be found to have been committed; and therefore the verdict paſſed againſt *Mannocke*, who pleaded the former adminiſtration: but if he had pleaded it generally, without naming the perſon who committed the adminiſtration, as ſome entries are to be ſeen, then the firſt matter would raiſe a doubt.

[See Salk. 38. 40, 41. 2. Jones 1. Styl. 106.]

Before trial and after iſſue joined, the defendant to defraud the plaintiff of execution, conveyed his lands to friends, and received the profits himſelf, and this the ſheriff returned to the writ of *Elegit*; but upon the paſſing of 13. *El.* c. 5 a *pluries elegit* was awarded.

(8) IN debt on bond for one thouſand marks, the defendant pleaded conditions performed; and upon a certain point they were at iſſue, and the defendant ſuppoſing it certain that the iſſue would be found againſt him, between the iſſue joined and the trial thereof, imagining by fraud and covin, and colluſion, to defraud the execution of the judgment to be given, (*a*) enfeoffed divers * perſons, *ſ.* three of his friends, by deed indented, to the uſe of his eldeſt ſon in tail, remainder to the uſe of his ſecond ſon in tail, with divers remainders over, and the remainder of the fee-ſimple to the right heirs of the feoffor; with a *proviſo* in the ſame deed, that if at any time after, he ſhould pay or tender a piece of gold of ten ſhillings value to any of the feoffees, all the uſes ſhould be extinct, and that they ſhould ſtand ſeiſed to the uſe of the feoffor and of his heirs &c. And notwithſtanding the feoffment, he continually took the profits of the lands contained in the deed. And all this matter was found by the inquiſition and oaths of twelve good and lawful men, and returned by the ſheriff upon an *elegit*, with the value of the lands, and that the ſheriff and the jury were in doubt whether the lands aforeſaid ſhould be liable to this execution for the moiety; and

3. Co. 78. 89. Dy. 193. 267, 268.

3. Co 81.

* [295. a.]

3. Co. 7. Ret. de vic. 5.

(8) *E.* 11. *Jac. C. B.* † *Holcraft's* caſe. A man conveyed lands for the preferment of his children, and afterwards ſold them *bonâ fide*, † *it is good*, if he was not indebted at the time of the firſt conveyance to the children, otherwiſe it is by the Juſtices, if &c.

(*a*) See of fraudulent conveyances, 13. *El* c. 5. 27. *El.* c. 4. 2. Com. dig. 228. Bac Ab. Fraud. (C.) Cowp, 434. 705. 2. Black. Rep. 1019. 2. Br. Chan. Caſ. 90. 148. 1. Term Rep. 729. 2. Term Rep. 587. And ſee Cowp. 427. Dougl. 86. & 89. note.

† Orig. *neſt hon.*

prayed

prayed the advice and direction of the Juſtices of the Bench. And ſee the many caſes and ſtatutes againſt fraudulent gifts of lands or chattels, following: Coke 3. 78. b. 82. a. void conveyance.

(9) ¶ A man condemned made ſuch a gift of goods to delay execution, and he himſelf took the profits: this is not good to avoid the execution, nor any treſpaſs in the officer and creditor taking them. 22. Li. Aſſ. 44. 72. 43. E. 3. 2. a. 3 Co 81, 82. 48. E. 3. 22. b. in the caſe.

¶ *Elegit* granted of lands that the defendant in waſte had on the day of the verdict given. 17. & 18. E. 3. 5. 58. Execution 8. 52. 66.

(10) ¶ *Walter de Chyrton*, Cuſtomer of the King, being greatly indebted to him, purchaſed lands with the King's money, and took the eſtate of the lands, to his friends, to defraud the King; but he himſelf took the profits: theſe lands were extended to the King in the Exchequer. In Scaccario. Dier 160. a pl. 41. S.C. 24. E. 3. ro. 4. 3. Co. 12. 11. Co. 92. & 93.

(11) A man indebted for merchandize, or money borrowed, made a gift of his tenements and chattels to defraud the creditors, and took the profits of them, and fled to *Saint Mary*'s, or a privileged place, and this colluſion found: the tenements and goods ſhall be put in execution as if no ſuch gift had been made, and a like ſtatute 1. *R.* 2. c. 9. of fraudulent gifts of lands and goods. 50. E. 3. c. 6. Raſ. Execution 150. b. Dy. 49. pl. 15.

(12) ¶ If any man indebted, by any manner of means, make ſuch gift to delay his creditors of their recovery and debts, and afterwards fly to places privileged by the church, living there of the profits of the things ſo given, he may be ſued, and by two *capiaſes*, whereof the ſecond ſhall have five proclamations for five weeks at the gate of the ſanctuary; and if he make default judgment ſhall be given for the † *debt*, and execution, as if no ſuch gift had been made. 2. R 2. cap. 3. ſt. 2. Raſ. dett. 5. 107. 3. Co. 78.

(10) Grant by one to a ſurety before that he hath paid any money, is not good; but that may be ſold by the Commiſſioners of Bankrupt, by ſtatute 1. *Jac.* [c. 15.] becauſe it is not a valuable conſideration; 1ſt, Becauſe nothing is paid; 2d, The ſurety cannot compel him to do it; but otherwiſe if he had been bound to make him ſuch ſecurity. Note 5. Co. 24 F. Nat. 137. He ſhall not have a *plegiis acquietand.*'

(11) *E.* 15. *Jac. Rot.* 1314. *Cartwright* and *Dent* againſt *Underbill*, [Hutt. 42. S. C. but not S. P.] a fraudulent conveyance, (becauſe there was no notice) of goods to a ſurety for his indemnity, and afterwards the ſurety paid the debt; in this caſe the commiſſioners may ſell or aſſign: by Mr. *Darkſdale* in his reading on the ſtat. 21. *Jac.* [1. e. 19.] of bankrupts in the year 1627.

† Orig. *Defendant.*

T. 7. H. 4. rot. 109. 43. E. 3. 2. 3. Co. 82.

(13) ¶ Colluſion in gift of lands and goods of one who fled to ſanctuary to defraud him who had recovered of his execution, was inquired into, and certified in the Bench; and upon this a term extended and delivered at an annual value, until &c. according to the late ſtatute.

* [295. b.]

Ann. 13. H. 4. 8. E. 3. 32. Det. 9. 3. Co. 82.

* (14) ¶ Debt againſt one as executor of *I. B.* who ſays, that the ſaid *I. B.* in his life-time gave all his goods to him by the deed produced, without this, that he had adminiſtered of any other goods: and plaintiff took an averment that this gift was made by fraud and colluſion to ouſt him and others, to whom he was debtor of their actions; and the other took iſſue, that the gift was made *benâ fide* &c. *quod nota.*

3. H. 7. ca. 4. B.N.C.471. Raſ. Uſes 6.

(15) ¶ All deeds of gift of goods and chattels made or to be made in truſt to the uſe of the maker of the deed of gift, be void and of no effect.

M. 34. E. 1. 3. 4. E. 3. Gar. 88. 3. E. 1. Voucher 301. 3. Co. 78.

(16) ¶ In formedon the warranty of the anceſtor with aſſets deſcended &c. was pleaded in bar; and the demandant ſaid, *reins per diſcent* &c. The jury found that nine days before the death of the anceſtor, he, with intent to wrong the heir of the aſſets, enfeoffed him of the ſame land &c. by fraud &c. whereby he was barred; for he ſhall not have advantage of this fraud. See in *Garranty*, *Fitz.* 88.

An. 13. El. ca. 5. Raſ. Fraudulent deeds fol. 188. Co. Lit. 290.

(17) ¶ An act againſt fraudulent deeds, gifts, alienations &c. which hath a reference back to the commencement of the reign of the preſent Queen. And in the Term of *Trinity*, in the 13th year, a *pluries elegit* was awarded; and of the return above no mention was made, but the writ and the return holden out by the difference of the Juſtices in their opinions; and a continuance made upon the roll by *non miſit breve* &c.

(13) Action of debt brought againſt an heir, who aliened pending the writ &c. [Dy. 249. a.]
(14) So adjudged 39, 40. *Eliz. C. B.* between *Kitchen* and *Dixon*, [Gouldſb. 116.]

The *capias* on which the writ of exigent lies, muſt be into the county

(18) A *Capias ad ſatisfaciendum* iſſued, which was returned *non eſt inventus:* and upon a *teſtatum latitat* &c. in a foreign

(18) *Trin.* 11. Car. *B. R.* ✝ *Palmer* and *Hill.* Judgment in *London* againſt executors *de bonis teſtatoris*, and upon a *fieri facias* and *nihil* returned, upon the *teſtatum* into *Buckingham*, a *devaſtavit*

a foreign county, a *capias* iſſued thither, which was alſo returned *non eſt inventus*; and upon this iſſued immediately an *exigi facias*, without any reſort to the county where the original was brought: and the defendant upon this was outlawed. And by the common opinion of the officers and practitioners this was erroneous; for there ought to have been another *capias* upon the reſort, and then an *exigent*.

where the action is brought; if it iſſue on the *teſtatum* into a foreign county, it is error. 11 E. 3. Exigent 26. 17. E. 3. 71. 22. E. 3. 11. 11. H. 4. 72. [2. Crompt. Pr. 42, 43. 2. Hawk. P. C. 431, 432. 3. Bac. Ab. 769.]

vaſtavit returned; and upon that another *fieri facias de bonis propriis*, in *Buckingham*, is error, for it ought firſt to be in *London*. [See 1. Hen. Bl. 541.]

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(19) TWO men, neighbours, are ſeiſed ſeverally of two adjoining cloſes, whereof the incloſure of the fence between them by preſcription belongs to one of them only, who purchaſes alſo the other cloſe, ſo that he hath unity: and he permits the cloſes to be open without any fence between, and hath iſſue two daughters, and dies ſeiſed; and they make partition of both cloſes, and the one cloſe is allotted to one ſiſter, and the other to the other ſiſter, without any mention of the charge of the fence. Whether the charge be revived, or not, was demurred in law. See a like of a gutter in *London*, through the land of his neighbour, in 11. *H.* 7. fol. 25.

A by preſcription is to keep up a fence between his cloſe and *B.*'s; he purchaſes *B.*'s, lays both into one and dies, and his daughters make partition of theſe cloſes; whether the preſcription for the fence revives?—*quære*. 11. H. 4. 5. 11. H. 6. 22. a. 20. E. 3. admeaſurement 8. 19. E. 3. Nuiſans 2, 3. 14. H. 4. 3. a. 7. a. Noy. 119. 2. Sid. 39. 3. H. 6. 31. b. 21. Aſſ. 1. 21. E. 3. 2. a. 4. Co. 38. Ro. 527. Dav. 5. Dy. 327. a. 2. Keb. 686. [Sir T. Raym. 192. 1. Vent. 97.]

(19) *Hil.* 4. Jac. *B. R. Jorden* and *Wood*'s caſe, [Ow. 121.] reſolved, That a way by preſcription, by unity of poſſeſſion is extinct. [See Cro. Eliz. 300.]

Dey and *Brake*'s caſe, 3 Jac. *B. R.* [cited Palm. 446. and in Noy. 84. as *Drew* and *Prake*'s caſe. See *Drake* v. *Doylie*, Noy. 14.] Rot. 124, *Surry* and *Pigat*'s caſe. Unity, becauſe it is not of neceſſity.

Hil. 1. *Car. B. R.* Rot. 124 *Surry* and *Pigott*'s caſe, unity of poſſeſſion does not extinguiſh a watercourſe: which ſee argued at large, *M.* 2. *Car. B. R.* [W. Jon. 145. Lat. 153. Palm. 444. Noy. 84. Poph. 166. 3. Bulſtr. 339.]

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*(19) A SUBJECT of this realm, being a merchant of *London*, departed out of the realm without the Queen's licenſe, ſolely with the intent that he might live there free from the laws of this realm here, and out of his due obedience to the Queen, and not for any cauſe of traffic. Whether ſuch departure be any offence or contempt to the Queen, or not? And by the opinion of the JUSTICES of both Benches, and the CHIEF BARON, except CATLYN Chief Juſtice, and WHIDDON, ſuch departure,

Departing the realm for the ſake of living out of due obedience to the laws, is no offence, unleſs there has been expreſs reſtraint by writ or proclamation.

* [296. a.]

1. El. 165. a. Sty. 442. Lit. Rep. 27. Dy. 176. 13. El. c. 3. Raſ. fugitives 1.

departure, without an expreſs prohibition or reſtraint by proclamation, or writ of *ne exeat regno* awarded by the King or Prince, is not any offence or contempt, for it is a thing indifferent to depart the kingdom; and the purpoſe and cauſe, which is ſecret in the heart, is not examinable. See the writ in *Nat. Brev. Fitzh. accord' fo.* 85. in the writ *de ſecuritate inveniendâ quod ſe non divortat ad partes exteras ſine licentiâ regis*; and to prove the common law to be as above, the general prohibition, or defending that King *Richard* 2. of his royal majeſty made in parliament, an. 5. c. 2. againſt going out of the realm, except lords, good and notable merchants, and ſoldiers.

[1. Hawk. P. C. 91, 92. 11. St. Tr. 60. 61. 4. Mod. 177. 1. Bl. Com. 266. 4. 122.] Fitz. 35. a.

Raſ. paſſages 3. repealed by ſtat. 4. Jac. 1. c. 1. § 22.

Stanley's Caſe.

Coverture of the *feme* after the murder of her former huſband, bar her appeal.

(20) ONE *Stanley*, priſoner in Newgate, was indicted for the murder of *I. S.*, and thereupon was arraigned, and pleaded not guilty; and was found guilty: and immediately the wife of *I. S.* entered an appeal of the death; to which defendant pleaded by counſel, that the plaintiff, after the death of the huſband, had taken another huſband (without ſhewing his name) at *Exeter*: which was a foreign plea, to which the plaintiff did not reply; and ſo the matter reſted for a year. And afterwards, by *certiorari*, the indictment and all proceedings upon it were removed into *B. R.*, and the priſoner alſo. And now this Term he was brought into *B. R.*, and being aſked why judgment ſhould not be given upon the ſaid verdict, pleaded all the matter above, and that the appeal is yet pending; to which the Queen's attorney pleaded *nul tiel record*: and no continuance of the appeal had been after the ſaid foreign plea pleaded, which is more than a year ago; and ſo the record certified: *quære* what ſhall be done? And afterwards, in this Term, the wife was nonſuited in her appeal; wherefore judgment was given that *Stanley* ſhould be hanged by the neck upon the indictment and trial above.

[Kelyng 92, 93. 2. Hawk. P. C. 243. 2. Inſt. 68.] 4. Co. 46. Sta. 3. H. 7. c. 1. Dr. St. 133. 151. 31. H. 6 11. a. 9. H. 7. 19. b. 17. Aſſ. 1. 16. E. 4. 11. a. 21. H. 6. 28. b. 9. E. 4. 2. a. 21. E. 4. 73. B. N. C. 445. Stamf. Corone 59. Dy. 88.

21. Aſſ. 4. 45. E. 3. 25. a. 11. H. 6. 8. b.

24. E. 4. 19. 21 H. 6. 29. Stamf. 147.

(20) *Hil.* 35. *Ed.* 3. rot. 71. ✝ *Cecil Dey's* caſe, that a *feme covert* ſhall not have appeal.

John

John Conier's Caſe.

(21) MEMORANDUM, That *John Coniers*, Gentleman was indicted for traiterouſly receiving, aiding, and comforting one *John Fairfax*, Gentleman, knowing the ſaid *Jo. F.* falſely and traiterouſly to have counterfeited and made divers pieces of money of falſe metal to the ſimilitude of good and lawful money of *England*, called ſhillings: * and upon his arraignment was found guilty. And the juſtices did not proceed to judgment of treaſon upon this indictment, becauſe it is only miſpriſion of treaſon: and of that opinion afterwards were many others. And at length he was pardoned.

Knowingly to receive the maker of falſe coin, is not treaſon, but miſpriſion of treaſon. [Jenk. cent. 6. c. 18.] 12. Co 81, 82. 9. H. 6. 47. Hales pl. 20. 127. con. 3. H. 7. 10. a. Stamf. 37. b. 38.

* [296. b.]

[1. Ld. Raym 67. 1. Hawk. Pl. Cor. 87. & 2. 440. contra, and ſee 1. H. H. P. C c. 22. & 28. throughout.]

(21) *E.* 8. *Car. B. R.* † *Francis Plum*, *Jacob Maſſe*, and *Will. Greſham*, were arraigned for miſpriſion of treaſon, for counterfeiting and coining rixdollars, guilders, and ſtivers. In evidence to the jury it was found that they had mixed much baſe metal with the ſilver, and that they conveyed it over the ſea, and there only uttered it; and were found guilty, and pardoned. [14. *Eliz.* c. 3.]

Page *againſt* Moulton.

Entered M. 10. & 11. El. rot. 1260.

(22) THE father, upon communication of marriage of his youngeſt ſon, promiſed to the friends of the wife, that after his death and the death of his own wife the ſon ſhould have the land to him and his heirs. And the marriage is had, but this promiſe is by parol only, and no conſideration on the part of the woman: and the father was ſeiſed of the land in his demeſne, and not in uſe; and this found by ſpecial verdict upon not guilty. Whether the uſe changes by this covenant, or not, was the doubt. And by the opinion of ALL the four JUSTICES of the Bench, without open argument, the uſe is not altered by ſuch naked promiſe; and ſo adjudged in next *Hilary* Term.

A parol promiſe, in conſideration of a ſon's marriage, that he ſhall have the land after his father's death, will not raiſe an uſe to the ſon. Winch. 37. 1. Sid. 26. 82. Plow. 308. b. D. S. 100 a. Cro. Eliz. 344. Dy. 96. Mo. 333. 544. [Sir T. Raym. 47. Shep. Touch. 483. 2 Com. dig. 569. Gilb. Uſes 60. See Hob. 313. and 2. Wilſ. 75.]

(22) Between *Callard* and *Callard*, [Mo 688. 2. And. 64, Poph 47.] 36. *Eliz.* in the Exchequer-chamber, by Baron CLERK, WALMSLEY, PRIAM, and ANDERSON; upon a conſideration of natural affection an uſe may be created without deed, and no Juſtices *contra*. And 37. *Eliz. Corbin* v. *Corbin*, [2. Rol. Ab. 784. pl. 4. and Mo. 544. S C but not determined,] by three Juſtices an uſe may be created by parol upon conſideration of natural affection. [By the ſtatute of frauds, 29. *Car.* 2. c. 3. a writing is neceſſary.]

(23) ONE,

A baſtard is not a child within the meaning of 32. *H.* 8. c. 1. § 4.
If an office only find that knight-ſervice land is conveyed in tail to *A.* by the King's tenant, the Attorney-General may ſupply the defect, by averring that *A.* is ſon to the donor.
6. Co 77. a. 10. 83. a. Dy. 181. pl. 51 B.N.C. 394. Noy 25. 14. El. 313. b. 18 Eliz 345 a. 23. Eliz. 374. b. 29. E. 3. 14. b. Dy. 228. 1. Keble 268
[Co. Lit. 78 a. & 123. Mr Hargrave's note 8. That a baſtard is within the meaning of the Marriage Act. 1. Term Rep. 96 and ſee 2. Br. Ch. Caſ. 583.]

(23) ONE, being a mere baſtard, had an eſtate tail conveyed to him by his reputed father, of lands, holden by knight-ſervice of the Queen, by act executed in the life of the donor, and died, the heir within age: and this eſtate is found by office, but the baſtard not called baſtard or ſon to the donor. Firſt, Whether the Queen be entitled to the third part thereof by the equity of the ſtatute, as a preferment of a legal ſon, *quære.* And if ſhe be, then what remedy the Queen hath for not naming the ſon or child in the office? Whether her attorney may take an averment or ſuggeſtion that he was the ſon, or child, or wife, as the caſe requires, although he be not ſo named in the office, or a new office is to be found for the Queen, *quære.* And as it ſeems the baſtard ſhall be out of the ſtatute, becauſe he is, but as any other perſon, a mere ſtranger to the father, *quia filia nullius.* And the preamble of 32. *H.* 8. [c. 1.] rehearſeth, "*lawful* "*generations.*" And for the ſecond, it ſeems the attorney may enforce this office by a ſuggeſtion; for the Queen hath no other remedy; and the ſuggeſtion is not repugnant, but a ſupplement thereof only.

(23) *Trin.* 36. *Eliz.* in the Court of Wards. The advancement within the ſtatute ought to be found by inquiſition; and a nude averment doth not do that, by POPHAM and ANDERSON in one † *Smith*'s caſe.

If the warden, tho' by command of the Lord Treaſurer, and Chancellor of the Exchequer, ſuffer one in execution at the King's ſuit, and alſo at the ſuit of a ſubject, to go into the country with a keeper, to collect the King's debt, it is an eſcape.
Whether *B. R.* can charge in execution one condemned in that Court, already in the

(24) A MAN condemned in the Exchequer for a debt to the Queen, was committed to the Fleet by the Barons of the Exchequer, and being in execution, he was condemned in *B. R.* at the ſuit of a ſubject upon a bill of debt in cuſtody of the Marſhal: (*quære*, by what means he was brought there to anſwer?) And afterwards at the prayer of the plaintiff, an *habeas corpus cum cauſa* was awarded out of the ſaid Bench to the Warden of the Fleet, who certified the cauſe as above, and brought in

(24) *Hil.* 19. *El. C. B.* † *Moſten* in debt againſt the Warden of the Fleet for the eſcape of one *Price*, who was let out of the Fleet by command of the Lord Treaſurer and Barons of the Exchequer; and adjudged, that *Moſten* do recover againſt the Warden. And alſo there it was ruled, that if by command of the Barons at any day after the Term the Warden bring any priſoner before them, it is an eſcape.
Tr. 26. *El Rot.* 1343 Such command by the Barons of the Exchequer to *Anſtan*, Warden of the Fleet, who ſuffered one *Darcet* to go with a ſervant of the Warden into the country to ſatisfy the Queen the ſooner —*Manſer* in this plea recovered againſt the Warden by judgment upon demurrer. [Bendl. 238. Keilw. 214. pl. 26.]

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the body, which (for certain reaſons moving the Court, and for the ſaid * cauſes) was remanded to the ſaid Warden of the Fleet; and at the prayer of the plaintiff was committed by the Court to the ſaid Warden of the Fleet in execution of his debt and condemnation. After this an order was given to the Warden by the Lord Treaſurer and the Chancellor of the Exchequer on the part of the Queen, to ſuffer the priſoner to go into his country with a keeper to collect and levy money, the ſooner to pay her Majeſty her debt; which order was executed accordingly, and the priſoner brought back to the Fleet; and being there (the Queen's debt unſatisfied) the plaintiff brought a bill of debt againſt the Warden in *C. B.* upon this eſcape, who juſtified the above eſcape by the ſaid order: whereupon the plaintiff demurred in law. 1ſt. It is to be conſidered, Whether the prayer and requeſt of the plaintiff in *B. R.* for committing the body of the defendant in execution to the priſon of the Fleet (which is not the proper priſon of that Court, eſpecially for debt which is a civil and common plea, and not criminal, nor a plea of the crown) be lawful or not? And inaſmuch as the plaintiff commenced his ſuit againſt the defendant being in cuſtody of the Marſhal &c. which is the ordinary and immediate priſon of that Court, he ſhall not be received to change his priſon &c. any more than where the proceſs is directed to the Coroners, it ſhall not be directed to the ſheriff, although there be a change of ſheriff &c. Alſo it is to be conſidered what authority the Court of *B. R.* had to commit the defendant to the Fleet, on which the Warden is not attendant as an officer there, for if it hath no ſuch authority, then it follows that the priſoner was not in execution for the debt of the party, but in execution only for the Queen's debt. And although he were in execution for both, ſtill before the Queen is ſatisfied, the execution of the party does not commence; for the Queen hath no equal in her kingdom to have intereſt in the body of her priſoner, together with her &c. and ſo theſe matters ſerve well for the Warden. But the matter of the excuſe above is not ſufficient, for the command of the Treaſurer and Chancellor are not ſufficient warrant to licenſe one condemned in execution to go with a keeper

Fleet, at the ſuit of the King.

* [297. a.]

If the King have his debtor in execution, no ſubject can have execution until the King's debt is ſatisfied.

[10. Vin. Ab. 74.]

29. E. 3. 47. 38. H. 6. 30. 27. H. 6. 6. 9. H. 6. 54. 1. Ro. 894. Godb. 298.

Dy. 152. a. 197. a. 307. a. 19. E. 3. 13. Bar. 253. 2. Cro. 283.

Dy. 278. 306. Plow. 38.

Finch. fo. 68. b. Dy. 152. 14. H. 7. 31. b. 18. E. 4. 8. a. 3. 10. E. 4. 13. 20. H. 7. Cro. 57. 19. H. 8. 7. 9. E. 4. 46. 21. E. 4. 71. a. Dy. 197. 364. 1. Inſt. 158. [Dy. 275.]

[2 Bac. Ab. 629. 3, Com. dig. 486.]

[But ſee Cro. Car. 390. 1. Lev. 145. 146. 2. Com. dig. 647, 648. 2. Black. Rep. 1294. 4. Term Rep. 316. 402.]

Dy. 60. 29. E. 3. 13. 2. E. 4. 8. Dy. 275. 1. Ro. Ab. 806. 8. Noy 4.

[3 Com. dig. 183. Bac. Ab. Eſcape (B.)]

a keeper or otherwiſe at large; for the Queen herſelf could not do that: as was holden by the opinion of all the juſtices of both Benches in the time of Queen *Mary*. *T.* 4. and 5. *P.* & *M.* &c. [Ante 162. b. pl. 50.]

Puttenham *againſt* Puttenham.

In *auditâ querelâ* on a defeazance to a ſtatute for performance of covenants in an indenture, the declaration ſhould ſet out the covenants, and ſhew performance ſpecially.

[1 Com. dig 463. 465] 1. And. 229. 3. Cro. 208.

(25) RICHARD PUTTENHAM made a leaſe for a term of years to his younger brother *George P.* of the manor of *Shirfield*, in the county of *Southampton*, by indenture, in which were many covenants on the part of the ſaid *R.* to be performed; and for the performance he was bound by recognizance by force of a ſtatute ſtaple * to his ſaid brother *G.* on the ſame day that the indenture bore date. And another indenture of defeazance, bearing the ſame date, was made between them referring to the firſt indenture, *ſ. quod ſi dictus R. perimpleverit omnia et ſingula, conventiones &c. in dictâ priori indenturâ contenta ex parte ſuâ perimplenda quod tunc &c.* And afterwards *G. P.* ſued out execution of the ſaid lands and tenements of the ſaid *R.* in three counties: and he brought an *auditâ querelâ* upon the indenture of defeazance, which referred to the former indenture as above, with theſe general words in the writ, namely, *et licet prædictus R. omnia et ſingula, conventiones &c. ex parte ſuâ perimplenda &c. juxta tenorem et effectum indenturarum prædictarum bene et fideliter perimplevit &c.* as he is ready by ways and means convenient to manifeſt: *item tamen* G. *&c. executionem &c. tam tarde proſecutus eſt minus juſte &c.* And the Juſtices of the Bench were commanded by the writ, that "having "ſeen one part of the indenture aforeſaid, and called the "parties aforeſaid before them, and having heard on "both ſides their reaſons, they ſhould further cauſe to be "done in this behalf what of right and according to the "law and cuſtom of the kingdom &c. was to be done." And upon that a *venire facias* iſſued out of the Bench againſt *G. P.* "to anſwer to the premiſes and to do and "receive what the Court ſhall in that behalf ſee conſi-"derable," with a *ſuperſedeas* of any execution in the mean time: upon which writ ſerved, the parties appeared by attorney. (26) And without any declaring or ſhew-

* [297. b.]

1. Lev. 304.

[Herne's Pleader 53.] Dy. 193. pl. 30.

6. H. 7. 16. 48 E. 3. 1. 12. H. 4. 7. b. 24. E. 3. 30 B. Audita querela 41. 16. E. 3. proceſ. 163. 22. H. 6. 56. a. Dy. 193. b. 204. a. 339. Cro. 110.

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ing of the covenants of the indenture, or performance of them particularly on the part of the plaintiff, the defendant on his part ſhewed the indenture, and alleged a breach of covenant to charge the plaintiff, which he ought to have performed; wherefore he prayed that he might not be hindered, or delayed of his execution of the ſtatute; and the plaintiff traverſed the breach, and iſſue joined upon that and tried for the plaintiff. And it was alleged in arreſt of judgment, that this was a jeofail, and not remedied by the ſtatute 32. *H.* 8. [c. 30.] by reaſon of the inſufficiency of the declaration and failure thereof, as above; for he complains of his grievance in the ſuing of the execution againſt the defeazance which is conditional, and to be performed on the part of the conuſor, which he ought to ſhew, if he would take advantage of it, and this in particular, and how; for he hath undertaken it in his writ above, *s.* as by way and means &c, he is ready to manifeſt &c.

Dy. 97. pl. 46. 279. a. 5. o. 36. Raſ. repleader 36. Plow. 209. [5. Co. 35. a but the ſubſequent ſtatutes of Jeofails, do extend to declarations.]

And yet *M.* 3. *H.* 6. fol. 8. In debt upon indenture, in which were divers covenants to be performed on the part of the defendant, the plaintiff in his count alleged the breach of all generally, without naming any one in particular: this was good *primâ facie*, and a good plea for the defendant to ſhew as generally that he had performed all and had broken none. The plaintiff ſhewed by his replication a * covenant in particular broken, to which the defendant rejoined, and the jury were charged with this covenant only; and by the opinion of the Court it was holden good pleading &c. But it ſeems to me, that this count is (*a*) double or treble, or more &c. for the breach of one ſufficeth for the forfeiture of the entire ſum, wherefore &c.

Br. Count. 3. 5. H. 7. 7. 6. E. 4. 1. 46. E. 3. 33. 47. E. 3. 5. 19. E. 3. double plea 20. 33. Aſſ. 1. 20. H. 7. 1 20. 68. 3 H 4. 9. 6. H. 4. 9. Plow. 86. [Com. dig. Pleader (F. 14.) (V. 13.) Cowp. 578.]

* [29ᵍ. a.]

(Cro. Eliz. 809.] Dier 115. pl. 67. 21 E. 4. 6. b. 6. E. 4. 5.

And in the caſe above, judgment was given, That *G. Puttenham*, the defendant, might proceed in ſuing out execution, if he pleaſed.

(*a*) By 8 and 9. *W.* 3. c. 11. § 8. In debt on bond, or on any penal ſum for non-performance of covenants in any indenture &c. the plaintiff may aſſign as many breaches as he ſhall think fit.

Hilary Term,

13. Queen Elizabeth.

James Dyer *againſt* Margaret Viſcounteſs of Hereford.

Letter from the tenant to the grantee of land, who had requeſted him to attorn, ſaying, " I am glad of ſo good an heir as your Ladyſhip," is a valid attornment

3 Leon. 17. Plow. 46. b. 431. b 22. H. 6. 13. b. 4. E. 2. Quare imp. 44. 34. H. 6. 8. a. 10. E. 3. 47. a. 49. E. 3. 15. a. Lit. 126. a. 8. H. 7. 9. 6. 2. R. 2. Atturnment 8. 1. Ro. Ab. 300 (B.) 2. 303. (H.) 1.

(27) THE purchaſer of a reverſion (by fine acknowledged, and the Queen's ſilver entered, but the fine not engroſſed) wrote to the tenant, notifying this purchaſe, with a requeſt of good-will, and aſſent to attornment without compulſion by law; to which anſwer is made by letter ſubſcribed with the hand of the party, (That the conuſor by name not having it himſelf) " *I am* " *glad I have ſo good an heir as of your good L.*" Whether this amounts to an attornment at law or not, *quære*. And it ſeemed to CATLYN and divers of the Serjeants, that it is good enough. *(b)*

(b) By 4. *An.* c. 16. § 9. attornment was rendered unneceſſary; and by 11 *Geo.* 2. c. 19. § 11. in ſome caſes abſolutely void. See Doug. 282.

Hil. 12. *El. Rot.* 1509. *C. B.*

Vernon *againſt* Madder.

In a formedon againſt *baron* and *feme*; the *feme* received on default of the *baron*, may vouch another to warranty.

N. L. Entries 338. h. Dy. 314, 315. 103. 40. E. 3. 14. Plow. 13. b. 20. H. 6. 23. a. 21. H. 6. 49. a.

(28) A FORMEDON in remainder had depended five years, and delayed by &c. Now the huſbands made default, and the wives prayed to be received to defend their rights and inheritance, as daughters and heirs of Sir *Vernon* of the *Peke*, and vouched &c. Whether the Court *de jure* ought to admit the voucher, becauſe they are not ready to anſwer the demandant, and to defend their right, according to the ſtatute *Weſt.* 2. c. 3. which is conditional, *ſ.* " If the huſband abſent himſelf, " and will not defend his wife's right, or againſt the " wife's conſent will render the land; if the wife do come " before judgment ready to anſwer the demandant, and " to defend her right, the wife ſhall be admitted; like-

" wiſe

" wife" &c. And note this letter of the ſtatute for the true text, by the kindred ſenſe with that which follows after the *likewiſe:* and alſo confirmed by the manuſcript-book of Lord CATLYN, and the book which is called *Fleta*; yet all the printed ſtatutes of this chapter are, " *or in his own life will not anſwer*" &c. which ſeems falſe, and hath no probable ſenſe, for the huſband cannot anſwer by any poſſibility after his life; and therefore I conclude it ſhould be, " *or againſt his wife's conſent will render*" as above. It was much in queſtion, Whether the Court ought to admit this voucher, or may deny it without error. * And 7. *E.* 3. [32. a. pl. 29.] in *ſcire facias* upon a fine, the nonage of the tenant by receipt being in of the reverſion by deſcent was denied. And 25. *Aſſ.* [pl. 14.] in aſſiſe againſt huſband and wife, the wife tenant by receipt cannot be ſuffered to imparl &c. And at length it was holden by the Court to be the ſure way, and without error to grant the voucher.

Dy. 341. pl. 54. Age 112.

* [298. b.]

20. H. 6. 23. 9. E. 3. Age 118. 40. E. 3. 3. 20. E. B. reſceit 73. 5. H. 4. 1. 10. H. 4. 9. 6. E. 3. 10. a. 5. H. 7. 8. 21 E. 4. 65. Dy. 28.

Story's Caſe.

(29) A SUBJECT of this realm being beyond ſea, practiſed with the prince or governor of the ſaid country to invade this realm with a great power: and in his practiſing declared by what means, and how, and in what place the invaſion might beſt be: and that if ſuch invaſion ſhould be, there were many ſubjects there who would aſſiſt and adhere to him. (But yet there is no ſuch invaſion afterwards). What offences are theſe practices; and how and where they ſhall be tried: and if the practiſing there be for the death or deſtruction of the prince, what offence that is in the ſubject, and how and where it ſhall be tried, were the queſtions. And theſe offences are holden by the Juſtices to be treaſon: for an invaſion with power cannot be, but of neceſſity it will trench to the deſtruction or great peril of the per-

A ſubject conſpiring beyond ſea for the invaſion of this kingdom, tho' it is not executed, is guilty of treaſon by compaſſing the King's death, and ſhall be tried according to 35. *H.* 8. c. 2. which is not yet repealed. [Jenk. cent. 6. c. 19. S. C.] 2. And. 5. 66. Mo. 621. 3. Inſt. 11. 14. Hal. pl. 15. 1. Cro. 332. Dy. 28. [Foſt. Cr. L. 196. 21. 1. Hawk. P. C. 51. 1. H. H. P. C. 96. 1. Burr. 646.] 1. And. 263. 11. Co. 63. Stamf. 90. Raſ. Tryal 14. Raſ. Treaſon 23. Dy. 286. B. N. C. 449. 481.

(29.) See *St. John's* argument upon the bill of attainder of the Earl of *Strafford*, fo. 36. & 37. a good explanation of 25. *E.* 3. and other ſtatutes of treaſons.

ſon of the prince (*a*). And both offences are triable by 35. *H.* 8. [c. 2.] which ſtatute remaineth yet in force, notwithſtanding the repeal in the firſt year of Queen *Mary*, [ſeſ. 1. c. 1.] and the clauſe in 1. & 2. *P.* & *M.* [c. 10.] that trials in treaſons ſhould be according to the common law, and not otherwiſe. And ſo it was reſolved in *Trinity*, 3. *Ph.* & *Mar.* [ante 131. b. pl. 75.] More, *poſtea* fol. 300. b. pl. 38.]

[1. H. H. P. C. 169, 170. 2. Hawk. P. C. 317, 318. See Dy. 131. b.]

(*a*) So for a ſubject to procure money to be ſent, tho' it be intercepted, or to convey it from foreigners to thoſe againſt whom for receiving and protecting rebels there is a proclamation of enmity; or to diſtribute money ſo ſent amongſt the rebels themſelves, is high treaſon; as appears by the following caſes of Lord Chief Juſtice DYER, extracted from the MS. (See Preface.)

"The Earls of *Weſtmorland* and *Northumberland*, with divers other rebels, fled into *Scotland*, where divers *Scotch* Lords received and detained them; and being required by the Queen our Sovereign to render and deliver them, the Lords refuſe. The Queen, by aſſent of the King of *Scotland*, and his Governours and Council, ſendeth a proclamation of enmity with an army to the Lords caſtles and holds in *Scotland*, who, with the rebels being fled, their caſtles and holds are taken, razed, and ſpoiled. After this, the French Ambaſſador's letters of comfort and promiſe of relief are procured, and ſent to the *Scotch* Lords by a ſubject of this realm; and thereupon, ſhortly, ſix hundred pounds of the ſaid ambaſſador's money is covertly ſent towards *Scotland* by the ſubject; which money was intercepted by the way, and never came to the Lords. Whether this fact be treaſon in the ſubject for adherence, aiding or comforting of the Queen's enemies, by 25. *E.* 3. And it was reſolved by all the Juſtices to be treaſon.

"Alſo divers open rebels flee into *Flanders*; and for their relief there, one thouſand two hundred crowns are ſent from the Pope to be diſtributed among them; a ſubject of this realm being put in truſt to ſee it diſtributed, appointeth two hundred of the crowns to one chief rebel, and as much to another &c which is done accordingly. Whether this be treaſon in the ſubject? And reſolved as above, to be treaſon. [See *Foſt. Cr. L.* 217.]

Tenant *in capite* makes a feoffment in fee, till he pay to the feoffee, or his heirs, one hundred pounds; the feoffee dies, his heir within age: the King is entitled to wardſhip of body and land, liable to have it deveſted on payment of the hundred pounds.

[Shep. Touch. 117.]

2. Rol. Rep. 469. Co. 133. b. 10. 85. a. 2. Keble 143. 222. Co. Lit. 76. b. 248 a. Dy. 300. 1. Keble 800. 2. Eliz. 181. a 7. Eliz. 236. a. 15. E. 4. 14. a. 3. H. 7. 25. a. 22. El. 369. a. Dy. 25. B. N. C. 265. Inſt. 222. a.

(30) THE King's tenant *in capite* made a feoffment to the uſe of the feoffee and his heirs, until ſuch time as the ſaid feoffor ſhould pay to the feoffee or his heirs one hundred pounds; and that upon and from the day of payment thereof, the feoffee and his heirs ſhould ſtand and be ſeiſed to the uſe of the feoffor and of his heirs, and that then and from that time it ſhould be lawful for the feoffor to re-enter &c. The feoffee died ſeiſed, his heir within age; and afterwards the feoffor paid the one hundred pounds to the heir: after which payment an office is found of all this caſe ſ. of the tenure, of the feoffment &c. And by a *monſtrans de droit*, the hands of the King are amoved from the poſſeſſion with the iſſues from the time of payment. Whether the cuſtody and marriage of the heir be ſuch chattel veſted before the office,

office, that it may not be deveſted by the redemption of the land, which was the cauſe of it; and Whether without tender, the King ſhall have the double value, or not? And it was reſolved in *Hilary* Term, in the 14th of the preſent Queen, that the Queen hath no right or title to the double nor to the ſingle value in * this caſe; for all mean eſtates or contingencies in the mean time made, are by the redemption and condition above, defeated &c. See for the reſolution of a condition performed, *poſtea* fol. 369. 51.

[12. Car. 2. c. 24]

Litt. 358, Plow. 42. ſame reaſon.

Eaſter Term,

13. Queen Elizabeth.

(31) THE conuſor and conuſee of a ſtatute ſtaple die, and the executors of the conuſee ſue out execution in the Chancery; upon which writ the death of the conuſor is returned by the ſheriff; and alſo an inqueſt of extent of the conuſor's lands; but in the inquiſition no certain eſtate is returned, but generallv that the conuſor was ſeiſed on the day of the recognizance made of the manor of *Brodeley*, where the name of the manor is *Borley*, without ſhewing what eſtate &c. and yet a *liberate* iſſued upon this return, and was returned ſerved, *s.* that the executors of the † conuſee had accepted it according to the extent. Yet *quære*, Whether the executors, or their executors, if they die before any profit received from the land, may not pray a re-extent upon this inſufficient and uncertain return &c. was the queſtion. And by the opinion of the Juſtices ſhewn to the keeper of the great ſeal, they may; for the firſt was void: for he might be

The conuſee of a ſtatute ſued execution, on which the death of the conuſor was returned ſeiſed of a manor, and an extent thereof, without ſhewing what eſtate he had in it: this is void, for after his death no land but fee-ſimple can be extended; but he may have a new extent, tho' he had accepted the firſt by *liberate*

2. Ro. 38. 16 Dy. 180. pl. 9. 2. R. 3. 8 36. H. 8 Br. Stat. merchant 43. 2. Leon. 121. 4. Co. 74. a. but he miſtakes the eſtate there.

[Co. Lit. 290. a. 5. Com. Dig. 502.]

(31) Note, That Nov, at a mooting 22. *Nov. 5. Car.* ſaid, that in 2. *Eliz.* upon a *diem clauſit extremum*, it was found by office that *I. S.* was ſeiſed and dead; and it was not found of what eſtate he was ſeiſed. And in the Court of Wards it was reſolved that this office was utterly void; and ſo void, that a *melius inquirendum* could not be awarded upon it. 8 Jac. Exchequer, * *Rolſton.* Inquiſition found, that *R.* was ſeiſed or poſſeſſed of one meſſuage and divers lands &c. *Cur'* It is bad, becauſe no eſtate is found.

† Orig. *Conuſor.*

ſeiſed

Plow. 437. 11. H. 7. 21. b. 11. Aſſ. 21. 38. Aſſ. 5. 27. H 6. Stat. recovery 1. 2. Cro. 693.

ſeiſed for term of life or in fee tail: in which caſes the land after his death is not extendible. Therefore (of neceſſity) in this caſe, where the death of the conuſor appears in the return, his ſeiſin ſhould be found of a fee ſimple only.

DEVONSHIRE.

Eveleigh *againſt* Turner, and others.

The plaintiff in *quare impedit*, claiming under a grant from one who had two parts of the advowſon appendant to a manor (a ſtranger having the third) needs not ſhew how the grantor's turn commenced; for the appendancy ſhews it to have been by preſcription.

8. Co. 136. Hob. 172. Mo. 867.

(32) *QUARE impedit*, by *Eveleigh* againſt *Turner* and others, for the church of *Talleton*. The count was, That one *Nicholas Fraunces* was ſeiſed of the manor of *Talleton Fraunces* with the appurtenances, in the county aforeſaid, to which the advowſon of the church aforeſaid, *ſ.* to preſent to the ſame church every third time that the ſaid church ſhould be vacant, then belonged, and ſtill doth belong, in his demeſne as of fee; and that one *Egidius Hill* was ſeiſed in his demeſne as of fee, of the manor of *Talleton Hill* with the appurtenances, in the county aforeſaid, to which the advowſon of the church aforeſaid, *ſ.* to preſent to the ſame church twice, or two turns of the ſame, the one next following the other which ſhould chance or happen to be vacant then belonged, and ſtill doth belong. And the aforeſaid *Egidius* being ſo ſeiſed &c. preſented twice together, and ſhewed in certain; and the ſaid *N. F.* preſented the third turn * &c. And *Hill*, by beginning again, preſented as in his firſt turn, and granted the next avoidance to *J. Moore*, Knight, who granted it over &c to *Eveleigh*, the now plaintiff &c. And Whether this count as above, without ſhewing ſpecially how the turns above commenced, *ſ.* by preſcription, or by compoſition, or otherwiſe, be ſufficient or not, was moved in arreſt of judgment after verdict paſſed for the plaintiff. And it is good enough, becauſe the appendancy of the manors includes of neceſſity a preſcription of which the commencement is not known; wherefore the plaintiff had judgment to recover. But it ſeemed to me, that it would have been better order to have commenced with the two firſt turns, which is the greater part of the advowſon, and then to ſpeak of the third turn, and not as above. Alſo to ſay, that the lord of the manor of

* [299. b.]

3. Leon. 164.

4. H. 6. 13. 10. H. 7. 15. 22. H. 6. 10. 11. H. 4. 4. 5. Co. 7. F. Nat. 2. c. Mo. 867, 881.

[3. Mod. Ent. (38) 5. Com. dig. 315.]

Finch. 7. b. 46. E. 3. pl. 21. 5. H. 7. 8. 2 45. E. 3. 12. 8. Co. 161. Plow. 83.

(32) *T.* 44. *El.* † *B. Dilkes* and *Allen*. Judgment, that he needs not ſhew how the turns commenced. Lib. Int. † 498. 20. *E.* 3. *Monſtrans de faits*, 72. & 84. *E.* 3. 27.

T. Hill

T. Hill was ſeiſed of two parts of the advowſon, *s.* to preſent twice together as above; and the other lord, of the third part of the advowſon, *s.* to preſent to the ſaid church every third turn, according to 33. *H.* 6. fol. 11. becauſe he hath in that church only an advowſon or patronage, and a parſonage; and that would have been the better form, as I think. And yet, by the ſtatute of 36. *E.* 3. c. 15. the count ſhall not abate for default of form if the matter be ſufficient. A like caſe, *T.* 14. of the now Queen. rot. 1060, *Lovendon* againſt ——, and others, for the church of *Burgſtal*, in the county of *Berks*. [See Mo. 558. 3. Cro. 686. 5. Co. 102.]

[2. Lutw. 1091. but ſee 2. Leon. 36. Co. Lit. 17. b. 18. a. and the notes there.]

Raſ. declaration 1. and pleadings 1. 14. H. 8. 13. b. Co. Lit. 304. b.

(33) A MAN ſeiſed of a manor in fee, holden of the King *in capite*, before the ſtatute of *quia emptores terrarum* [*W.* 3. 18. *E.* 1. ſt. 1.] enfeoffed one *I. S.* of part of the demeſnes in fee, without ſaying more; the feoffee enfeoffed another to hold of the feoffor and his heirs, at the rent of twenty-ſix ſhillings and eight pence *per annum*, in lieu of all ſervices and demands; this land is not holden *in capite* clearly: and the firſt meſnalty is holden of the feoffor as of the manor by knight-ſervice.

The feoffee of tenant *in capite*, before the ſtatute of *quia emptores*, making a feoffment over to hold of his feoffor by a rent for all ſervices, clearly makes no tenure *in capite*. And the firſt meſnalty is holden only by knight-ſervice. Dy. 42. 2. Inſt 65, 94. H. 8 52. a. 22. H. 6. 50. 5. E. 2. Avowry 207. Perk. 667. Co. Lit. 23. a. [Ante 52. a. b. pl. 3.]

(34) IN debt the plaintiff declared upon a recovery of coſts and damages in a writ of entry, whereby the action accrued; the defendant pleaded in bar, that the plaintiff after the judgment immediately ſued out an *elegit*, and delivered the writ to the ſheriff, who ſerved the writ, and delivered the moiety of the land extended to the plaintiff &c. without ſhewing the return thereof. *Quære*, Whether it be a bar. And as it ſeems it is; for the plaintiff cannot vary in proſecuting execution from that which he hath elected on record &c. *Ideo quære.*

That plaintiff had an *elegit* executed, is a good plea in bar to an action for damages recovered without ſhewing the return of the writ. 1. Ro. Ab 601. Coke 4. 67. a. 5. Co. 90. a. Br. Execution 6. 49. E. 3. 23. 24. 20. 21 H. 6. 24. 5. a. 44. E. 3. 18. a. 11. H. 4. 58. a. 2. Cro. 338. 1. E. 3. 1. 6. 19. H. 6. 4. 3. Cro. 817. 15. H. 7. 15. 17. E. 4. 4. Dy. 368. 1. Keble 465. [Com. dig. Pleader (2. W. 36.) Heath's Maxims, 185.]

Sir

Sir T. Weſt's Caſe.

Iſſue, whether a demiſe was made by *T. W. Lord W.* the dignity is parcel of the iſſue, and if he was not a Lord at the time of the demiſe, it muſt be found againſt the party.

* [300. a.]

21. E. 4. 51. 12. E. 4. 52. Co. Lit. 304. 3. Cro. 776. Hob. 129. 4. H. 6. 1. b. 35. H. 6. 5. b. 2. Ro. Ab. 705. 15. E. 4. 18. 21. E. 4. 71. Dy. 234. This caſe was affirmed for good law, 22. fol. 8. B.

[1. Ld. Raym. 305. Cro. Car. 173. 1. Term Rep. 240. Ante 278. pl. 1.]

(35) A LEASE for years was pleaded in debt, and in pleading it was ſuppoſed that *Thom' Weſt*, Knight, Lord *La Warre* was ſeiſed &c. in fee, and being ſo ſeiſed, on ſuch a day and year demiſed the tenements aforeſaid &c. to one *A. B.* for a term of years &c. And this demiſe was * traverſed, *s.* without this, that the aforeſaid *T. W.* Knight, Lord *La Warre* demiſed &c. And in truth then he was not a Lord, for his father was alive, who was of that name, *s. T. W.* Knight, and Lord *La Warre.* And his ſon and heir was Knight in the life of his father, and after the death of his father he was alſo Lord *La Warre.* Whether this iſſue ſhall be found for him who took the traverſe, or not, was the queſtion in *Guildhall, London*, at *Niſi Prius.* And as it ſeemed to me, it is parcel of the iſſue as it is traverſed, Whether he was Lord at that time or not: to which SAUNDERS and CATLYN agreed.

(35) *T.* 29. *Eliz.* † In *ejectione firmæ* the plaintiff made title by a leaſe for years, made to him by Sir *William Vaughan*, Knight. The defendant made title and traverſed, *abſque hoc* that Sir *William Vaughan*, Knight, leaſed to the plaintiff; and the jury found ſpecially that he made a leaſe before he was made Knight. ANDREWS Chief Juſtice thought that this was no part of the iſſue, whether he were Knight or not, but words of imagination, and ſufficient is found for the plaintiff.

E. 24. *Car. B R.* [Aleyn 58.] in the caſe between *Lake* and *Lake*, one Sir *F. Maynard* excepted, becauſe *Robert Sutton*, party to the leaſe, was named Lord *Lexington*, being, as he ſaid, only an Eſquire, and no Lord. And he cited this caſe of *Weſt* &c. And the Court ſaid, that this caſe was on a traverſe; but on a demiſe, a miſnomer of the leſſor or leſſee does not avoid that; and he cited Lord *Ewer's* caſe, 8. Jac. [1. Bulſ. 21. Cro Jac. 240.] *vide infra.* [Bac. Ab. Miſnomer. (D).]

The ſuggeſtion to have a writ to the coroners, ought to be of a principal challenge, and not of favor.

In *ejectione firmæ*, it is not a principal challenge, that the ſheriff is couſin to the leſſor of the plaintiff.

[Vin. Ab. Trial (He)]

(35) THE plaintiff in *ejectione firmæ* upon iſſue joined made a ſuggeſtion to the Court, that the ſheriff and the leſſor of the plaintiff, who is named in the declaration, are couſins, and ſhewed how, and prayed the *venire facias* to the coroners. *Quære* thereof, for *Lone* the Prothonotary held, that ſuch a ſuggeſtion ought to comprehend a principal challenge, and not to the favor: and alſo the leſſor is not a party to the writ any more than

(35) *E.* 27. *Eliz. Rot.* 388. *B. R.* in *Goodman* and *Frankellin*, [5. Co. 36. b.] adjudged, that the ſuggeſtion ought to be a principal challenge; and ſo it was adjudged *M.* 42. & 43. *Eliz.* between *Higgins* and *Spicer*, [Mo. 628.] which is entered *E.* 42. *Eliz Rot.* 248.

the

the maſter in whoſe right a cognizance is made in replevin by a bailiff, in 9. *H.* 7. fo. 22. Therefore *quære.*

Inſt. 157. b. Dy. 367. pl. 40. 2. Ro. Ab. 653. 669. Plow. 74. b. 12. Aſſ. 23. 10. E. 4. 12.

Bro. Challenge 158. Hutt. 24. 3. H. 7. 2. 20. E. 4. 12. 15. E. 4. 18. a. Mo. 896, 893. Ben. 98. [3. Bac. Ab 252, 253.]

The Caſe of Bedminſter Manor.

(36) QUEEN *Mary* being ſeiſed in fee, in right of her crown, of the manor of *Bedminſter*, in the county of *Somerſet*, to which the advowſon of the hoſpital of *Saint Catharine*'s, of *B.* is appendant, the hoſpital became void; and during the time of the avoidance, ſhe granted the ſaid manor, *and all advowſons belonging or appertaining to the ſaid manor, in as ample manner and form as E. late Duke of Buck.* &c. to *Edw. Nevill* in tail, and the grant was *ex certa ſcientiâ et mero motu* &c. But no mention was made of the preſent avoidance in the grant. But the Queen four years afterwards, preſented to the hoſpital, and the preſentee was admitted and inſtituted accordingly; and afterwards this incumbent died, by whoſe death the hoſpital is now void. And the patentee brought a *quare impedit*, and declared all this matter in his count, upon which is a demurrer in law. And in the next Term the declaration was adjudged by HARPER, WESTON, and DYER, *abſente* WELSHE, good enough. See a ſimilar caſe. *H.* 18. [*Eliz. poſt.*] fol. 348.]

The King during the vacancy of an advowſon appendant to his manor, *ex certâ ſcientiâ* grants the manor, and all the advowſons thereto appertaining: the immediate preſentation does not paſs.

11. Eliz. 283. a. [quod vide ante.]

2. Ro. Ab. 196. Mo. 249. 11. H. 4. 54. b. Qua. Imp. 31. 16. H. 7. 8. a. Dy. 130. 28. H. 8. 26. Dy. 364. 3. Co. 98. [Wats. Clerg. L. 89.]

(36) It ſeems by this caſe, that the grantee ſhall not have the preſent avoidance contrary to Fitz. Nat. [Brev.] 33. & 18. *E.* 3. 22 9. *E* 3. 26. Dy. 269. and this judgment is good law, *per Curiam, M.* 29. & 30. *Eliz C. B* Dy. 348.

A. had a manor to which an advowſon is appendant which is void; he grants the manor, together with the advowſon, to *B*—*B* ſhall not preſent for this turn, *E.* 28. *El.* Sir *Thomas Gorge*'s caſe [3 Leon. 196. Ow. 53 Gouldſb. 73.] in the caſe of the King; and *Trin.* 15. Jac. *Winchcomb*'s caſe in the caſe of a common perſon. [Noy. 25. 1. Brownl. 164. Mo. 877. Hob. 165.]

(37) THE defendant in debt on bond with condition to pay a leſs ſum at a day and place certain, imparled upon oyer of the bond and condition, until another Term, and then pleaded that he was ready to pay the ſum at the day and place accordingly; and that neither the plaintiff, nor any other for him, was then there

To debt on bond, tender at the time and place, but that no one was there to receive it, and *uncore priſt.* is a good plea without *tout temps priſt*, and may be pleaded after imparlance.

(37) And 19. *Jac. C. B.* All the Court were of opinion againſt this book. Gro. [Jac.] 627.

Inſt. 207. a. 4. H 7. 10. b. 1. And. 4. Ben. 37. 33. 36. H. 6. 2. 13. 21. E. 4. 42. a. 16. H. 7. 7. 19. H. 8. 12. 27 H. 8 1. 10. E. 4. 1. 7. E. 4. 3 Dy. 25. 150 a. 11. H. 4. 61. b. 36. H. 6. 13. a. 33. H. 6 2 L. 5. E. 4. 141. a.

[See 2. Ld. Raym. 254. and the caſes cited in marg. Edit. 1790. 5. Bac. Ab. 17. Gilb. C. P. 184. Bul. Ni. Pr. 156.]

to receive the money; and that he is now ready to pay, and tenders the * money in Court: that is good enough as it ſeems, without ſaying that he was *tout temps priſt* &c. becauſe he hath excuſed himſelf from forfeiture of the penalty by the plea above, if it be true. And from this plea he ſhall not be eſtopped by the imparlance above. And this by divers juſtices. But LESNARD, *Cuſtos Brevium*, thought otherwiſe.

Storie's Caſe.

If a known ſubject of this realm indicted for treaſon, plead that he is a liege ſubject of another King, and refuſe to anſwer to the indictment, he ſhall have judgment as if convicted.

Co. Lit. 129. a. Ante 298. b. Lit. Rep. 27 3. Mar. 131. b.

[See Foſt. Cr. Law 183. 59. 60. 1. Hawk. P. C. 51. & 1. H. H. P. C. 68. 96.]

(38) DOCTOR *Storie*, who is notoriouſly known to be born in *England*, *s.* at *Saliſbury*, and by this a ſubject and liegeman of the realm of the Queen of *England*, was arraigned of high-treaſon in *B. R.* at *Weſtminſter*, in this Term, upon an indictment there taken by a jury to enquire in *Middleſex*, for the three cauſes of treaſon in the laſt term, fol. 298. committed and perpetrated at *Antwerp*, in parts of *Brabant*. And in the indictment he was ſuppoſed to be an *Engliſhman* born, which he confeſſed; but he pleaded to the indictment that he would not anſwer to it, for he was ſubject and ſerjeant to King *Philip* of *Spain*, and not a ſubject of our Lady the Queen *Elizabeth*, and had been ſo for the ſpace of ſeven years; and prayed that his plea might be entered and allowed: but the Court would not allow this, but recorded a *nihil dicit*, if he would not plead otherwiſe; who would not ſay otherwiſe; wherefore judgment of treaſon was given generally &c.

4. El. 205. a. Stamf. 150. Styl. 188.

[2. St. Tr. 312.]

(38) The trial of a fact beyond the ſea ſhall be by the country, *ante* pl. 29. Treaſon is out of the ſtatute *Weſt.* 1. c. 12. † 16. *E.* 4. 33.

Feoffment to *A.* for life, then to his wife *B.* till ſuch child as he ſhall beget arrive at twenty-one years, and afterwards during her widowhood; tho' *A.* die without child, the widow is entitled to hold the land.—So Feoffment to *A.* and his heirs until *B.* pay ten pounds; *B.* dies without paying, *A.* ſhall hold the fee.

(39) A FEOFFMENT is made in conſideration of a marriage to be had, to the uſe of the feoffor for the term of his life, and after his deceaſe to the uſe of the wife by name that he was to marry, for, during, and until any ſon that the feoffor ſhould beget of the body of the ſaid wife ſhall accompliſh the age of twenty-one years; and after ſuch time as the ſaid ſon ſhould arrive at the ſaid age, then to the uſe of the ſaid wife for and during the

the time that ſhe ſhould live ſole &c. And afterwards they intermarried, and the huſband died without any iſſue begotten upon the wife, and ſhe entered immediately, and continued ſole &c. Whether her entry be lawful or not, was the queſtion upon a ſpecial verdict in *ejectione firmæ*. And by the opinion of WESTON, HARPER, and DYER, her entry is lawful, and the eſtate and the remainder of the uſe good, although that he never had ſuch ſon. And ſo they gave judgment without any argument; for if a feoffment be made to one and his heirs, *donec et quouſque*, *I. S.* ſhall pay to the feoffor or to his heirs one thouſand pounds; *I. S.* before any payment made dies, the feoffor and his heirs ſhall retain the land abſolutely *in perpetuum*; By all, at dinner in the Judges inn in * *Fleet Street*. And yet afterwards in *Michaelmas* Term, in the fifteenth year of the preſent Queen, a writ of error was brought upon this judgment.

Dy. 274. pl. 42. 3. Co. 20. a. 3. Cro. 533. Mo. 48. 1. Leon. 97. 7. E. 3. 19. Formedon 37. 9. Co. 24. 14. 1. And. 260.

1. Co. 154. a. 2. Co. 79. 14. E. 4. 3. 19. H. 6. 34. b 14. H. 8. 23. b. Dy. 298. 5. Eliz. 21. [Shep. Touch. 118, 122.]

* [301. a.]

Trinity Term,

13. Queen Elizabeth.

Lowe and Kyme *againſt* Paramour.

(40) ONE *Chevin* ſeiſed of the land in demand in the iſland of *Hartey*, in the county of *Kent*, ſold the land to *Paramour*, and for the aſſurance levied a fine to him; the conuſance of which fine was taken before Sir ROBERT BROOK Chief Juſtice of the Bench. And becauſe he doubted of the age of *Chevin*, he took certain examinations &c. by which he appeared to be of full age, as appears from the paper note of the fine; (*ut aſſeritur per Manwood.*) And in the ſame Term that the fine was levied, *Chevin* brought his writ of error, and aſſigned the error in *B. R.* on his nonage; and upon that had a *ſcire facias* to the ſheriff of *Kent* againſt *Paramour* the conuſee and terre-tenant, upon which a *nihil habet nec eſt inventus* &c.

In a writ of right the tenant choſe trial by battle, but when every thing was prepared and performed, at the day and place appointed for the battle, the demandants being ſolemnly called made default, whereupon final judgment was given againſt them.

Eaſt. 13. Eliz. C. B. Dy. 201. [Bend. 199. &] N. E. 182. S. C.

&c. was returned; whereupon iſſued an *alias ſcire facias*; upon which the ſheriff returned another *nihil* &c. And upon this return the Court proceeded upon the examination of the error: and as well by the inſpection of the perſon of the plaintiff as by the teſtimony of four lawful and truſty men, the Court adjudged him within age. And in the next Term the fine was reverſed for this cauſe. And afterwards, at the full age of *Chevin*, he ſold the land to *Lowe* and *Kyme*; and they by feoffment of *Chevin* were put into poſſeſſion; but *Paramour* would not quit, but continued his poſſeſſion. And by ſuit in the Chancery, commenced by *Paramour*, they went to iſſue upon the age of *Chevin* &c And the age of twenty-one years was proved by divers witneſſes at the time of the fine levied; the depoſitions of whom were exemplified. (41) And afterwards *Lowe* and *Kyme* brought a writ of entry *ſur diſſeiſin*, in the nature of aſſiſe, againſt *Paramour*, who pleaded *non diſſeiſivit* &c. And theſe matters were given in evidence to the jury in the Bench, who looked more to the depoſitions taken in the Chancery, than to the reverſal of the fine in *B. R.* and found for *Paramour*, *s.* that he did not diſſeiſe, contrary to the opinion of the Court; wherefore judgment was given that the plaintiffs take nothing by their writ &c. whereby they were barred, and brought attaint againſt *Paramour* and the petit jury. And although all theſe matters were declared in the Bench to the grand jury, * they affirmed the firſt verdict: but it was beſides given in evidence, that notwithſtanding the nonage the land was gavelkind, and might be ſold by the owner at the age of ſixteen (*a*) years, wherefore, &c.

Lit. 101. a.

25. Aſſ. 2.

* [301. b.]

(41) *M.* 42 & 43. *Eliz. C. B.* Examination by commiſſion out of the Chancery was not allowed to be given in evidence to a jury, becauſe the party in this action was party or privy to the ſuing out of the commiſſion, and ſo ſome might be cheated.

Note, That ſuch is the judgment where the defendant is barred; and ſo it was in an entry *ſur diſſeiſin*, by *Carlton* v. *Cave*, 30. *El. C. B.* [Gouldſ. 85. pl. 8.] *Trin.* 32. *E.* 1. *C. B. Rot.* 68. *John*, the ſon of *Jordan*, within age, demiſed, and the jury found that he was fifteen years of age, and ſuch age ſufficeth for *Gavelkind* land; therefore a firm feoffment.

M. 20. *R.* rot. 62. ſhews that the heir in *Gavelkind*, at fifteen years of age, may aliene by the cuſtom. A ſimilar cuſtom in *London* for an infant. (*a*)

(*a*) That fifteen is the full age for *Gavelkind* tenants, and of their alienations at that age, ſee *Robinſon* on *Gavelkind*, 193 &c. particularly, and 215 to 225. But I cannot find in any other book that there is ſuch cuſtom in *London*; nor, as far as I have been able to learn, is any ſuch cuſtom known there.

So

So the firſt verdict was affirmed, and the demandants barred in the attaint. And upon this the demandants brought a writ of right, and counted upon their own ſeiſin in the time of the King and Queen, *P.* and *M.* &c. And *Paramour* choſe the trial by battle, and his champion was one *George Thorne*; and the demandants *e contra*, and their champion was one *Henry Nailer*, a maſter of defence. And the Court awarded the battle; and the champions were by mainprize and ſworn (*quære* the form of the oath) to perform the battle at *Tothil*, in *Weſtminſter*, on the *Monday* next after the *Utas* of the Term, and the ſame day given to the parties; at which day and place a liſt was made in an even and level piece of ground, ſet out ſquare, *s.* ſixty feet on each ſide due Eaſt, Weſt, North, and South, and a place or ſeat for the Judges of the Bench was made without and above the liſts, and covered with the furniture of the ſame Bench in *Weſtminſter Hall*, and a bar made there for the Serjeants at law. And about the tenth hour of the ſame day, three Juſtices of the Bench, *s.* DYER, WESTON, and HARPER, WELSHE being abſent on account of ſickneſs, repaired to the place in their robes of ſcarlet, with the appurtenances and coifs; and the Serjeants alſo. (42) And there public proclamation being three times made with an *Oyes*, the demandants firſt were ſolemnly called, and did not come. After which the mainpernors of the champion were called, to produce the champion of the demandants firſt, who came into the place apparelled in red ſandals over armour of leather, bare-legged from the knee downward, and bare-headed, and bare arms to the elbow, being brought in by the hand of a Knight, namely, Sir *Jerome Bowes*, who carried a red baſton of an ell long, tipped with horn, and a Yeoman carrying a target made of double leather; and they were brought in at the north ſide of the liſts, and went about the ſide of the liſts until the middeſt of the liſts, and then

7. E. 4. 29. 21. E. 4. 24. a. 11. H. 4. 30 Dy. 53. 212. 263. 1. Inſt. 294. b. 29. E. 3. 152. 30. E. 3. 20. 1. H. 6. 7. 2. Inſt. 247.

[See an excellent account of theſe combats collected in Minſheu's Dict. in verbo Combat. Edit. 1617.]

1. H. 6. 7.

Sir H. Spelman in his book 174. ſays, That the commencement of wearing of coifs by the Juſtices, was when Friars were Juſtices, to cover their bald pates. Verb. Coyf. b. 4. E. 3. 41. a. E. 3. 36.

(42) In a writ of right in the time of *E.* 3. in the year 1355. [29. *E.* 3. 12. a.] *Robert Wyvil de Saliſbury* v. *Will' Montague*, Earl of *Saliſbury*, the defendant choſe the trial by battle, and the Court awarded it, and a day and place given to the parties, at which they appeared arrayed as here; afterwards, by command of the King, the matter was ſtayed.

In the time of *Ed.* 3. when the contention was between † *William de Fakeham*, Knight, approvant, and *John Sythiſt*, Knight, defendant, for an armorial bearing: and upon battle joined, the King determined it.

came

come towards the bar before the Juſtices with three ſolemn congies, and there was he made to ſtand at the ſouth ſide of the place, being the right ſide of the Court; and after that, the other champion was brought in like manner at the ſouth ſide of the liſts, with like congies &c. by the hands of Sir *Henry Cheney*, Knight &c. and was ſet on the north ſide of the bar; and two Serjeants being of counſel of each party in the midſt between them: this done, the demandant was ſolemnly called again, and appeared not, but made default; upon which default, BARHAM, Serjeant for the tenant, prayed the * Court to record the nonſuit; which was done. And then DYER, Chief Juſtice reciting the writ, count, and iſſue, joined upon battle, and the oath of the champions to perform it, and the fixing of the day and place, gave final judgment againſt the demandants, and that the tenant ſhould hold the land to him and his heirs for ever, quit of the ſaid demandants and their heirs for ever: and the demandants and their pledges to proſecute, in the Queen's mercy &c. And then ſolemn proclamation was made, that the champions and all others there preſent (who were by eſtimation above four thouſand perſons) ſhould depart, every man in the peace of God and the Queen. And they did ſo, *cum magno clamore* "*Vivat Regina.*"

[Carth. 47. ante 98. a. b.]

72. H. 7. 6. b. 26. E. 3. 65. b. 12. H. 7. 10. 42. E. 3. 15. Dy. 103. Finch. fo. 28.

Speed's Cron. fo. 1186.

Vivion's Caſe.

An office finds *A.* the youngeſt ſon of *B.* coheir with others; this will not give him right as heir; nor will ſuing out livery with them, holding Courts, and receiving rents by the hands of their common bailiff, give him any poſſeſſion by tort, on which a releaſe and grant without livery may enure: and after this releaſe, continuance of the tenants without notice of the grant to pay the rents to the ſame bailiff as before, is no attornment to him.

[18. Vin. Ab. 307.]

(43) *ELIZABETH Trecherffe*, one of the great aunts of Sir *Edward Courtney*, late Earl of *Devon*, was married to one *John Vivion*, Eſquire, and had iſſue within the eſpouſals one *John*, who was reputed an idiot, and whom the ſaid *John Vivion* always thought to have been begotten by one *Mayo*, and not by himſelf; and for that reaſon commonly called him (and others did ſo likewiſe) *J. Mayo*. And after this ſhe had iſſue another ſon, alſo named *John*, who was always named and reputed *John Vivion*. After this *Elizabeth* died, the Earl and her huſband living; then the Earl died, and by an office after his death without iſſue, the Jury found that *John Vivion* the Younger, Eſquire, ſon and heir to *John Vivion*, Eſquire, and

and *Elizabeth* his wife &c. was one of the coheirs of the Earl; (the father and the elder ſon then living.) And thereupon *John Vivion*, the younger ſon, ſued out livery with the other coheirs, and in perſon went to the manors with the other coheirs: their courts were holden by a ſteward appointed by the Earl in his life-time, in the names of all the coheirs, named firſt by their proper names. And as well the farmer or leſſees, as the copy-holders and tenants, attorned to them all, and paid the rents to their common bailiffs. After this, *John Vivion* the Younger, obtained of *John*, his elder brother (naming him *John Mayo*, otherwiſe *John Vivion*, Gent.) a releaſe, with words alſo of gift and grant of all the right, title, claim, intereſt, and demand of and in the ſaid manors &c. *habendum* the manors &c. to him and his heirs, naming himſelf *John Vivion* the Younger, Eſquire; but no livery was made. After this deed executed, the farmers and tenants aforeſaid, without any notice or privity of the ſaid deed or grant, paid the rents as they had done before &c. Firſt, Whether *John Vivion*, the younger brother, may in law be taken as coheir by reaſon of any office, livery, court-keeping, attornment, or other act before expreſſed, or by any averment of the meaning of the inqueſt of office or not * And it ſeems he cannot be ſo taken in law, by the opinion of the Court. Alſo, Whether any act done before, gained any tenancy by diſſeiſin, abatement, or intruſion in *John Vivion*, the younger brother, upon which a releaſe might enure. And it ſeems not in tenancy of land in leaſe for life, years, or in tail, nor in the copyholds, ſo long as they continue their poſſeſſion without expulſion or removal; but *quære* of copyholds. Alſo, Whether the attornment after the deed of grant and releaſe made without notice thereof given to the tenants be good or not? and it ſeems not. (44) And in *Michaelmas* Term, in the fifteenth year of Queen *Eliz.*

Dy. 313. 2. Keb. 756. 785. 2. Co. 67.

Dy. 96. 35. H. 6. 7. 7. H. 7. 6.

* [302. b.]

14. E. 3. 30. 45. E. 3. 20. 11. E. 3 meſne 36. Stamf. prerog. 34. 10. H. 7. 23.

Lit. 135. a. 2. Eliz. 178. b. Lit. 126. a. Dy. 173. a. 234. 2. R. 2. attornment 8. 4 Co. 126. Co. Lit. 309. b.

2. Co. 67. b.

[See 11. Geo. 2. c. 19. § 11.]

(44) *Hil.* 40 *Eliz.* and *M.* 40 & 41. *Eliz. B. R. Tibb* and *Popelewell*, [2. Rol. Ab. 786, 787. Raym. 47.] *Anne Sheffield*, in conſideration of a marriage to be between her and *Will' Ferme*, gave and granted certain land to *Ferme* and his heirs to the uſe of him and his heirs, with warranty, but no letter of attorney. the queſtion was, Whether this ſhall paſs by way of uſe; and the doubt thereof was, Whether by this conveyance ſhall be intended that the meaning was to paſs by feoffment, and not poſſeſſion, *quære.* And in that caſe Coke, Attorney-General, and Popham Chief Juſtice, ſaid, that it was reſolved in this caſe of *Vivion*, that an uſe ſhall not be raiſed, becauſe it was the meaning to paſs it by releaſe.

ſ. on

s. on the fifteenth day of *November*, the queſtions and opinions of the caſe above were re-examined and conſidered, and the reſolutions aforeſaid affirmed, by ſubſcription of the counſellors and aſſiſtants at the Court of Wards. s. Firſt, By the Lord BURLEIGH, Lord Treaſurer and Maſter of the Wards, Sir JAMES DYER, Sir EDWARD SAUNDERS, ROBERT KELEWAY, and KINGESMILL the new attorney of that Court. And the ſaid reſolutions were put to certain commiſſions in the county of *Somerſet*, in the nature of a *Mandamus poſt mortem* of *John Vivion*, the elder brother, who had two daughters at one time born, s. gemels or twins, yet in full life, who are his heirs, and within age: and by that the twins are found heirs to their father, and a dying ſeiſed in their father. And afterwards in *Eaſter* Term, 18th of the preſent Queen, *Plowden*, for *John Vivion* the Younger, would aver, that the deed of releaſe above was for brotherly love; ſo the uſe of the land ſhall be thereby raiſed and veſted in the releaſee. Alſo, that the younger (*John*) by the name of *John Vivion*, Eſquire, levied a fine with proclamations in the 4th year of the preſent Queen, to certain of his friends *ſur cognizance de droit come ceo que* &c. And by that fine by the name of *John Vivion*, Eſquire, he would eſtop *John* the Elder &c. But *quære*, if any of theſe matters ſhall benefit his title.

Stamf. prerog. 15. 1. Ro. Ab. 569, 570. 604. Dy. 336. 19 34. H. 6. 44. 19. 36. Eliz. B. R. Nelſon's caſe 1. H. 4. 5. Plow. 309.

Coke 7. 40. b. covenant to ſtand ſeiſed to the uſe of my brother is good, without expreſs words of conſideration.

5. E 4. 40. 10. H 6. 58. 20. H. 6. 19. a. 17. E. 3. 9. 33. H. 8. B 215. 1. Keble 319.

(45) FORGERY of a will, whereby any leaſe for years is conveyed &c. ſhall be puniſhed by this word (*writing*) only, yet no mention is made of any teſtament; but of a will concerning freehold or inheritance, mention is made in the ſtatute 5. *Eliz.* [c. 14.] And it was doubted Whether perjury committed in the eccleſiaſtical court, concerning the probate of a will, might be puniſhed in the Star-Chamber by reaſon of the proviſo in the ſaid act of perjury, in the fifth year, [c. 9.] which ſee, and the proviſo for the Star-Chamber.

Forgery of a will, by which a leaſe is deviſed, is within 5. *Eliz.* c. 14. Plow 80. Raſ. Forger of falſe deeds 2 Dy. 322. Cro. 100. pl. 33. 3. Inſt. 171. [1. Hawk. P. C. 341. Forgery of a will &c. is made a capital offence by 2. Geo. 2 c. 25. made perpetual by 9. G. 2. c 18. and ſee 1. Str 483 3. Term Rep. 126.] [See Dy. 243. a. 288. a.]

(46) NOTE,

In Cur' Wardorum.

Copyholders idiots are not within the ſurvey of the Court of Wards, but of the manor Courts only. 4. Co. 126. b. 2. H. 7. 3. b. Dy. 291. pl. 69 Noy 27. The court of Wards aboliſhed by 12. Car. 2. c. 24. And ſee Comyns dig. Idiot (C.) & Bac. Ab. Idiot (C.)]

(46) NOTE, That it was clearly agreed by the Counſel of the Court, that a copyholder who is an idiot ought not to be ordered in this Court * for his copyhold; but that ſhould be done in the court of the lord of the manor.

(46) The rule of the Court of Wards is, That if an idiot hath not any goods or chattels, or lands, except copyhold lands holden of a common perſon, the King ſhall not have the cuſtody, but the Lord of whom the copyhold is holden; but if he hath any other, then the copyhold land alſo. *E.* 13. *Eliz.* † *John Roger*'s caſe, *C. W.* fo. 74.

In the time of *H.* 8. *Pace*, Dean of *St. Paul*'s, was in cuſtody of the Archbiſhop of *Canterbury*, being a lunatic; it was a queſtion in the Court of Wards who ſhould have the cuſtody; and upon precedents ſhewn, the Archbiſhop had him in cuſtody, and not the King; which were cited by Mr. *Eyres*, in his reading at *Lincoln's Inn*

Trin. 33 *El. B. R.* † Debt by *Sowper* againſt *Goodbody*, The caſe was, *John Packer*, copyholder in fee, holden of the manor of *Stow* by copy of court-roll (of which Juſtice Gawdy was ſeiſed) by licenſe &c. leaſed the copyhold for years to *Goodbody*, rendering rent, and died: the Steward committed the wardſhip of the land and body of *Henry Packer*, the ſon and heir, to *Sowper*, who for rent-arrear brought debt, and reſolved *per Curiam*, that it well lies, for by the uſage ſuch an intereſt being in the lord of the manor to commit the wardſhip to another, is a good reaſon that ſuch committee ſhall have an action for the profits; as 15. *H.* 7. 13. b. that guardian in ſocage ſhall have treſpaſs in his own name. But note 7. *E.* 3. 38 That a guardian in chivalry may avow, but guardian in ſocage ſhall make cognizance: ſo of a bailiff, 21 *H.* 6. 11. † 30. *E.* 3 19 and Cro 46. That guardian in ſocage may avow. [Cro. Jac. 98, 99] If an alien purchaſe copyhold land he may not retain, nor ſhall the King have it; but the lord of the manor ſhall have benefit thereof. So reſolved by *Harriſon*, Reader of *Lincoln's Inn*, 1632. [Stiles 20 40. Aleyn 14.]

In Cur' Ward.'

The commiſſion for an office of lands in *Cheſter*, muſt be out of the Chancery there, not from *Weſtminſter* And for lands in *England* and *Ireland* of tenure in chief, there ſhould be ſeveral liveries, and by ſeveral ſeals. (*a*) Davis Rep. 166. 171. R. 311 2. Ro. Ab. 503. [4. Inſt. 213.]

(47) NOTE, That an office found by commiſſion of *Mandamus* iſſuing out of the Chancery at *Weſtminſter* before the commiſſioners of the county of *Cheſter*, for lands holden *in capite* in the ſaid county, was holden void by the Council of the Court of Wards; for that ought to be by writ or commiſſion, iſſuing out of the Chancery there into the Exchequer. Alſo for lands of *capite* tenure within *England* and *Ireland* there ought to be ſeveral liveries, and by ſeveral ſeals. (*a*)

(*a*) By 12. *Car.* 2 c. 24. all tenures are changed to free and common ſocage, except frank almoign, copyhold and grand ſerjeanty.

Michaelmas Term,

13 & 14 Queen Elizabeth.

Northcote *againſt* Ward.

The King by act of parliament might not grant the office of aulnager, without a warrant of the Treaſurer. Such grant is then void, tho' it have a *nonobſtante* clauſe, if that clauſe be not ſhewn to the Court. (*a*)

Dy. 52. a. 4. Co. 35. b. Hob. 146.

(48) QUEEN *Mary*, by letters patent under the great ſeal, of her ſpecial grace, certain knowledge, and mere motion, lett, granted, and gave over to farm to the aforeſaid *Ward*, the farm of the ſubſidy and ulnage of ſaleable cloths in the counties of *Devon* and *Cornwall*, and the ſubſidy and ulnage itſelf; and ordered and appointed the ſame *Ward* collector of the ſubſidy, *habendum et occupandum*, for the term of twenty-one years, at the rent of twenty-four pounds twelve ſhillings *per ann.* and this was done without warrant of the treaſurer &c. *Ward*, by indenture, rehearſing the grant, aſſigned all his eſtate, term, and intereſt in the premiſes to *Northcote*; and covenanted, that he was lawfully poſſeſſed of the ſaid farm by the ſaid letters patent. And *Northcote* ſuppoſing the covenant broken in this, becauſe the patent was void by reaſon of the want of the treaſurer's warrant by the ſtatutes thereof made, which are chiefly touched upon hereafter, brought a writ of covenant, and upon the writ and count the defendant demurred &c. The office of aulnager, or collector of the cuſtoms, or ſubſidy of aulnage, remains in the hands of the King under the governance of the treaſurer, with the aſſent of the council, when it is neceſſary. And that a charter thereof

9. Co. 60. b.

3. Keble 80.

(48) The farming out of cuſtoms hath been anciently uſed by our Kings Thus *Edw.* 3. † *lett* the new and old cuſtoms at *London* for ten thouſand marks monthly, to be paid unto the wardrobe. The like was done in the 17th year of *R.* 2. *Anno* 20. who let out for term of life the ſubſidy of cloth in divers countries. And *E.* 4. *Anno* 1. the ſubſidy and ulnage of cloth. Thus did *H.* 8. with his cuſtoms, and ſince his time, the late Queen, and our now Sovereign.

† Orig. *with*.

(*a*) By 1. *W.* & *M.* ſeſ. 2. c. 2. § 12. It is enacted, that from and after that ſeſſion of parliament no diſpenſation by *nonobſtante* of or to any ſtatute, or any part thereof, ſhall be allowed; but that the ſame ſhall be holden void, and of no effect, except a diſpenſation ſhall be allowed of in ſuch ſtatute. And by ſtat. 11. & 12. W. 3. c. 20. aulnage duties are taken away.

made

made for life or years to the contrary, would be clearly void, 17. *R.* 2. c. 5. and this act is confirmed 1. *H.* 4. c. 13. The aulnage may be committed to farm with improvement by advice of the treaſurer and barons &c. notwithſtanding the ſaid ſtatute of 17. *R.* 2. c. 5. 4. *H.* 4. c. 18. [20.] * (49) All letters patent of the office of aulnager, or of aulnage, contrary to the effect of the ſaid laſt ſtatutes ſpecially recited, ſhall be void, and of no force. And that no patent of the office or of the aulnage ſhall be made afterwards but by grant of a bill ſealed by the treaſurer, ſent by him into the Chancery, as hath been accuſtomed. And if it be made by other warrant than by bill of the treaſurer, be it void and of no effect, 31. *H.* 6. c. 5. The treaſurer hath power and authority to put to farm by ſufficient mainprize the ſubſidy and aulnage of ſaleable cloths. 17. *E.* 4. c. 5. Aulnage or aulnager, the meaſure and meter by the yard: in Latin, *aulnagium* et *ulnatur*; for *ulna* in Latin is a yard: and not an ell, for *XII pollices faciunt pedem, tres pedes faciunt ulnam, quinque ulnæ et dimidium faciunt perticam. Inter vetera ſtatuta*, fol. 49. Alſo, aulnage is taken for the cuſtom of aulnage, to be paid more or leſs. 9. *H.* 4. c. 2. Alſo, aulnage of foreign cloths by the King's aulnager, 2. *E.* 3. c. 15. [14.] ſubſidy for every yard not in grain 4*d.* and for the half 2*d.* beſides the cuſtom &c. and the aulnage-fee for a whole cloth one halfpenny, and for the half, a farthing, 27. *E.* 3. c. 4.

Raſt. Officers 3. 4.

Raſ. Officers 8.

Raſt. Drape 33.

Tothill's Vet. ſtat. 2. a. pars. fol 45, 46.

All theſe ſtatutes Raſt. Drapery fol. 117, 118.

And in the end of this Term, by the reſolution of all the Juſtices of the Bench without argument, judgment was given for the plaintiff. And that the ſaid letters patent of the Queen *Mary* were void, although they contained a clauſe of *non obſtante aliquo ſtatuto* &c. becauſe it is not ſhewn to the Court that it had ſuch clauſe &c.

Br. Patent 109. See Plowd. 502. a Dy 240. 2. R. 3. 12. a. 2. H. 7. 6 b. 4 Co. 35. b. 2. Keb. 247. Hob. 146. Mo. 902.

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(49) A MAN had iſſue five ſons, his wife being enceinte with the ſixth at the time of his death, and by his laſt will in writing, declared and willed, "that "the third part of all his lands ſhould deſcend and come "to his ſon and heir; and the other two parts he gave "and bequeathed to his four younger ſons by name, "and to the heirs male of their bodies begotten; and if "the

A. deviſes two parts of his lands "to his four "younger ſons in tail, "and if the infant *in "ventre ſa feme* be a "ſon, that he ſhall have "a fifth part as co-"heir; but if all die "without iſſue, then to "revert." *A* dies; afterwards a ſon is born; he ſhall take nothing; nor ſhall any of

the two parts revert, till all five are dead without iſſue.

2. Bulſt. 273. Hob. 33. 1. Keb. 800 11. H. 6. 13. a. B. N. C 434. Dy. 333. pl. 29. 1. Bulſt. 62. 1. Ro. Rep. 135. 18. El. 350. b. 1. Sid. 153. 2. Keb. 296. 9. H. 7. 25. a 30. Aſſ. 47. 10. E. 3 45. Co. 7. 9. a. cont. 13. a. 5. H. 4. 3. a. 38. E. 3. 26 17. E. 3. 29. 9. H. 6. 24. Dy. 3 31. 342. Lit. 283 Plow. 345. Hob. 33. B. N. C. 431. 434. 2. Cro. 656. 3. Keb. 84.

"the infant *in ventre ſa feme* ſhould be a ſon, then him to "have his fifth part as coheir with his four youngeſt bro- "thers; and if they all five ſhould happen to die without "iſſue male of their bodies, or any of their bodies lawfully "begotten; then he willed that the ſaid two parts ſhould "revert, remain, and come to the next heirs of the de- "viſor for ever." The ſixth ſon was born after the death of his father, and afterwards he and three of his other younger brothers died without iſſue. Whether the ſurviving brother ſhall have an eſtate tail, *ſ.* to him and his heirs male of his body in the whole two parts, or only in the fifth part, and the other four parts thereof after the death of the ſurvivor (having iſſue male of his body at the time of his death) to revert or remain to the heirs of the deviſor, or not. (50) And firſt by the * opinion of SAUNDERS Chief Baron, DYER, BENDLOWES, and MEADE, the ſon born after the death ſhall have nothing, becauſe he was not capable as a purchaſer when the deviſe firſt took effect; becauſe he was not then in *eſſe vel rerum naturâ*. But WHIDDON *e contra*. And for the other point it ſeemed to them that the ſurvivor ſhall have an eſtate tail in the whole two parts: and ſo long as there is any iſſue male of his body no part of the ſaid two parts ſhall revert or remain to the heirs, for that was the true intent of the deviſor by the words above if they are well weighed. See a ſimilar caſe *poſt M.* 15. [*Eliz.* fol. 326. a.]

* [304. a.] [See the note to page 399. of Shep. Touch. and the books therein referred to Shep. Touch. 418. 2. Black. Rep. 1159. 1. Wilſ. 106. 2 Br. Ch. Caſ. 320. Ib. appendix 530. and ſee 10 & 11. W. 3. c. 16]

[Co. Lit 195. b. Mr. Hargrave's note (1.) Cowp. 31. 777. 797. Ambl. 665. 4. Term Rep. 710.]

(50) *M.* 27 & 28. *El. B. R.* Between *Fuller* and *Fuller* [Cro. Eliz. 422. Mo. 353] agreed, that he ſhall take, if publication of the will be made after his death. [See 4 Term Rep. 601.]

An alien muſt pray a jury *de medietate* before any of a common jury be ſworn.
A *Scotchman* is not an alien.

(51) ONE *W. D.* was arraigned in *B. R.* upon an indictment of rape on a girl or damſel of ſeven years of age, and no more; *ſ.* that he felonioufly raviſhed and carnally knew her. And he pleaded not guilty; and a *venire*

(51) A man of ſixty years old who had a wife, was arraigned at Newgate ſeſſions 22. Jac after the Term, for the rape of a girl then of the age of ſeven years, and no more; and was found guilty by apparent evidence of divers women and a ſurgeon, and the girl herſelf; and hanged by the neck.

Martin Page, ſervant to *Wood*, Keeper of *Saint John's Head* Tavern, in *Fleet-ſtreet*, at the ſeſſions after *Euſter*, 9. *Car.* was indicted for a rape on the daughter of *Wood*, the Keeper, of the age of nine years; and upon inſpection no penetration was found, and therefore he was acquitted. But afterwards, *Mich.* 9. he was again indicted for the aſſault in *B. R.* and fined two hundred marks, and pilloried before the ſaid houſe for three hours, and impriſoned; and holden well. [Cro. Car. 352. See 3. Burr. 1696.]

See

a *venire facias* was awarded, and a panel returned, and three of the jury ſworn. And then he pleaded that he was a *Scot* by birth, and prayed his trial *per medietatem linguæ*. And by the opinion of the Juſtices of both Benches he ſhall not have it, becauſe a *Scot* was never here accounted an alien, but rather a ſubject. And alſo the *Scottiſh* language is not a ſtrange tongue, but mere Engliſh: and beſides he had paſſed the advantage † by the general iſſue above. Wherefore he was tried; and by good evidence of divers women, matrons, he was found guilty. But the Court doubted of rape in ſo tender a (*a*) child. But if ſhe had been nine years and more, it would have been otherwiſe.

Whether a rape can be committed on a child of ſeven years old—*qu.* [Jenk. cent. 6. c. 20. S C.]

Vaugh. 281. 274. 6. R. 2. Protection 46. 12 5. 8. R. 2. cont.' claim 13. 2. E. 2. Obligation 15. Lit. p. 156. 13. H. 4. 5. a. 20. E. 4. 60.

† [2. Hawk P. C. 591. 2. H. H. P. C. 271, 272. 1. Black. Rep. 517.]

Plow. 368. 376 a 12. E. 287. a. 1. H. 4. c. 14. 32. H. 6. 26. 7. E. 4. 27. Lib. Intr. 459. b. Dy. 144. pl. 60. 19 El. 357. b. 21. H. 7. 32. 3. E. 4. 12. Lit. 8. a. 7. H. 6. 11. 12. H. 4. 3. 35. H. 6. 41. F. Nat. 149. Dr. St. 14. a. 2. Keb. 601.

See *Forteſcue de Laud. Leg. Angl.* c. 13 and *Selden* upon it. fol. 6. that *Scotland* always belonged to the Crown of *England*, 11. *E.* 3. Bre. 473. 39. *E.* 35. 36. 42. *E* 3. 2. b. 13. *H.* 4. Bro. Appeal 153.

(*a*) Now by 18. *El.* c. 7. it is enacted, That whoſoever ſhall unlawfully and carnally know and abuſe any woman under the age of ten years, ſhall ſuffer as a felon without clergy. See 1. H. H. P. C. 630, 631.

Hind *againſt* Grevil. (*b*)

(51) HIND was barred in a *ſcire facias* upon a recognizance of ſix hundred pounds made for the payment of three hundred, by the pleading of a forged releaſe, or acquittance by *Grevil*, he being privy to the forgery, or knowing of the forgery; of which *Grevil* is convicted in the Star-Chamber, wherefore *Hind* is entitled to have double coſts and damages, there to be aſſeſſed by act of 5. *Eliz.* [c. 14.] Whether the damages ſhall be taxed according to the penalty, or only according to the real due debt, being only three hundred pounds, *quære* (*c*) And in *Hilary* Term following, it was reſolved by all the Juſtices, that the damages of neceſſity ought to be aſſeſſed at double the penalty which ought to have been recovered,

The damages aſſeſſed under 5. *Eliz.* c. 14. for a forged releaſe, ſhall be double of the penalty, not of the ſum really due.

3 Inſt. 171, 172. S. C. Br. Tryal 42. Supra. 144. pl 61. Br. Noſme 29. 12. Eliz. 287. 19. Eliz. 357. b.

(*b*) This caſe is not in the edit. of 1592. but Lord Coke, 3. Inſt. 172, ſays, "*this was reported by the Lord Dier and imprinted, and ſince omitted out of the print.*" I met with the Edition of 1585, juſt as this ſheet was going to preſs; it is not in that Edition, nor in any that I have ſeen, except the laſt; and it is obſervable here that it makes a ſecond pl. 51.

(*c*) See 2. *Geo.* 2. c. 25. made perpetual by 9. *G.* 2 c. 18. by which the forging of any acquittance, or receipt for money or goods, is made, in the firſt inſtance, felony without benefit of clergy.

If

if the forged releaſe had not barred him, and then he was for ſo much damnified. Which reſolution being reported in the Star-chamber, was accepted; and notwithſtanding this, *Hind* (of his own offer) was bound to abide by the order of my Lord Keeper, and my Lord LEICESTER in the mitigation thereof.

In *ejectione firmæ* for a rectory, it is ſufficient to ſay in the count, that the parſon is ſeiſed in his demeſne, without expreſs averment of his life.
16. H. 7. 7. a. 15. H. 7. 8 Dy. 258. 10. E. 4. 18. 2. E. 6. B. N. C. 381. Lit. 646. 35. H. 6. 49. 5. Co. 121. Dy. 99. 299. 346. 360, 361. 10. Co. 57. b. 59. b. 3. Co. 2. a. 10. H. 7. 12. Plow. 485. 2. Bulſt. 263. 1. Cr. 401. Mo 376. 2. Cro. 622. 2. Bulſt. 79. 263. Pal. 509. [5 Com. dig. 51. Co. Lit. 303. b. 1. Term Rep. 141. Doug. 177. Cowp 672.]

(52) IN *ejectione firmæ* for a rectory, after verdict, in arreſt of judgment inſufficiency in the count was alleged, becauſe the life of the perſon who was leſſor was not averred (*a*) expreſsly, but by implication, and that by theſe words, *s.* "that the aforeſaid *A. B.* rector of the "church aforeſaid, was and yet is ſeiſed of and in the rec-"tory aforeſaid &c. in his demeſne as of fee in right of "the church" &c. And by the opinion of the Court this is ſufficient in a count. SAUNDERS, Chief Baron, *e contra:* but judgment was given for the plaintiff.

(52) *Hil.* 36. *Eliz.* by POPHAM Chief Juſtice, If a bar be ill for the form only, and afterwards the defendant demur upon the replication, there the plaintiff ſhall not ſhew the inſufficiency of the bar in arreſt of judgment; but it is otherwiſe where a bar is not ſufficient for the matter and ſubſtance of it. Between *Walſer* and *Bold*, [noted in Noy 70] 4. Jac. *C. B.* the caſe of Dier 52. was reſolved and affirmed. [See Hob. 56. Lutw. 1604. 1592. 1607.]

(*a*) Now by 21 Jac. 1. c. 13. § 2. and 4 & 5. *Ann*, c. 16. after verdict or judgment by confeſſion &c. the lack of any averment of the life of any perſon ſhall not ſtay or reverſe the judgment ſo as upon examination ſuch perſon be proved to be in life.

If tenant in tail leaſe for years, and afterwards releaſe all the rent but a ſhilling, Whether the iſſue accepting that, is barred from the reſt of the rent reſerved.

Dier 123. 271. Plow. 2. 6. Co. 5. 6. a. Rol. contin 403. Br. acceptance 10. 20. H. 7. 4. 21. H. 7. 31. 4. E. 4. 36. 16. H. 7. 4. b. 38. E. 3. 23. 24. E. 3. 70.

(53) TENANT in tail made a leaſe for years rendering twenty ſhillings, and afterwards he releaſed all the rent, except twelve pence, and died; and his iſſue accepted the twelve pence. *Quære*, Whether thereby he is concluded from diſtraining for the nineteen ſhillings reſerved upon the leaſe alſo. And it ſeemed to SAUNDERS and CATLYN that he ſhall be; but WHIDDON and DYER *e contra*; for if the leſſor after the leaſe will grant that the leſſee ſhall hold his term without impeachment of waſte, and die, and afterwards the leſſee commit waſte, and the iſſue bring an action of waſte thereupon, he may well enough do it; which CATLYN granted; but it is not ſimilar; *quære.*

(54) THE

*(54) THE next advowſon of a church is granted to three, "*habendum to them and each of them, jointly* "*or ſeverally*;" and at the next avoidance, the firſt of the three named in the grant preſented the third, being a clerk, who was admitted and inſtituted by the biſhop. And a *quare impedit* was brought againſt the four; and the biſhop claimed nothing but only as ordinary; and the two firſt pleaded that they did not diſturb; and the clerk incumbent pleaded the grant above in bar; but he pleaded it as a ſtranger to the grant; and the plaintiff ſhewed that the incumbent and the ſaid third grantee were all one and the ſame perſon, and not divers: and upon this the other demurred in law; and judgment given for him and againſt the plaintiff in the next Term afterwards. But if one of the grantees above had ſolely preſented to the Biſhop, and he had refuſed &c. peradventure a *quare impedit* by him would fail; for the ſeverance in the *habendum* above ſeems void in law. See a like caſe *M.* 21. *E.* 4. 18. in the long report. [66. a. pl. 44.]

Grant of the next avoidance to three jointly or ſeverally one of the grantees preſents another who is inducted, and holden good: but the Biſhop might have refuſed him.

Br. Leaſes 54. 13. H. 8. 12. a. 14. H. 8. 17. a. 13. H. 8. Ro. 400. Bendloes 2. Ro. Ab. 348. 355. Br. Preſentment 4. Mo. 5. Plow. 153. 1. Inſt. 186. b. 3. Bulſt. 66.

21. E. 4. 66. a. 6. E. 4. 10. b. Co. Lit. 168. b. 3. Mar. 126. b. Dr. St. 115. b.

[Dal. 79. p. 17. Wats. Cl. L. 226, 227. 3. Mod. Ent. 87 Ante 106. a. note. (*a*)]

(54) An intereſt cannot be granted jointly and ſeverally 5. Co. 19. *Slingſby*'s caſe. [Jenk. 262, 263.]

Mo. Rep. *Trin.* 31. *H.* 8. Rot. 440. caſe 9. [14] one of the grantees of the next avoidance preſented another of the grantees; and holden good. [4. Leon. 119.]

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(55) THE tenant in ſocage of the King *in capite* made a feoffment, and took back an eſtate to him and his wife for their lives, remainder to the ſon and heir of the huſband in fee, the huſband and the wife died, the ſon of full age; *quære* well, Whether he ſhall have livery by the firſt branch of the ſtatute 32. *H.* 8. [c. 1.] And as it ſeems, the intent of the King was ſo; but by KAYLEWAY, it hath not been put in ure.

Whether the heir of the King's tenant in ſocage *in capite*, who enfeoffed another, and took back an eſtate to him and his wife for life remainder to the heir, is bound to ſue livery—*qu.*

Dier. 237. pl. 30. Raſ. Wills 2. Dy. 261. [12. Car. 2. c. 24.]

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(56) AN indictment was removed into *B. R.* ſ. "that "of malice aforethought, *A. B.* made an aſſault "on *C. D.* and the ſame *C. D.* felonioufly ſtruck, giving "him one mortal ſtroke, of which he languiſhed for "ſeven days, and on the eighth day of the ſtroke afore-"ſaid died," without ſaying, "and ſo the aforeſaid *A. B.* "the ſaid *C. D.* felonioufly did kill and *murder*;" therefore

Without the word *murdravit* in an indictment for homicide, the charge amounts but to manſlaughter.

5. E. 6. 68, 69. 4. Co. 39. b. 9. El 261. a. Stamf. 134. b. 9. E. 4. 26. b.

[2. Hawk P. C. 320. 1. H. H. P. C. 450.]

fore this word *murder* is wanting in the indictment. And whether this ſhall be adjudged murder, or only manſlaughter, was doubted, on account of the general pardon paſſed in the late parliament, in which murder is excepted. And at length it was reſolved by the Juſtices of *B. R.* and others, that without this word *murder*, it is only man-ſlaughter: and the general pardon allowed by CATLYN.

[1. H. H. P.C 466. 467. 4. Mod. 61.]

In ejectment, count of a demiſe of three hundred acres *per nomen manerii*, by virtue of which he entered *into manerium prædictum* is well enough, without ſaying he entered into the ſaid three hundred acres, and *manerium* is ſurpluſage.

Bridg. 67. 2. Ro. Rep. 135.

(57) IN *ejectione firmæ* the plaintiff counting ſaid, that whereas *A. B.* on ſuch a day and year at *Wittham*, by a certain indenture produced in Court, had demiſed to the ſaid plaintiff three hundred acres of land, ſixty acres of meadow, ſixty acres of paſture, twenty acres of wood, and one hundred acres of junks and reeds, in *W.* aforeſaid, *per nomen manerii totius illius de Wittham*, with the appurtenances in the county of *Cumberland*, to have and to hold *the manor aforeſaid, and the other premiſes*, with the * appurtenances to the aforeſaid plaintiff, from the ſaid day of the indenture aforeſaid, until the end and term of three years thence next following, and fully to be compleated, by virtue of which demiſe the ſaid plaintiff into the manor aforeſaid, and the other premiſes, with the appurtenances entered, *et fuit inde poſſeſſionatus*, till the defendant on ſuch a day and year, with force and arms, *intravit in manerium prædictum, and the other premiſes* with the appurtenances, and ejected him thereout from his ſaid farm &c. Whether the count by the ſaid *per nomen manerii*, and *habendum manerium* &c. and *in manerium intravit*, and *fuit inde poſſeſſionatus* &c. be ſufficient, or he ſhould ſay *habendum tenementa prædicta* &c. and *in tenementa prædicta &c. intravit?* (and this would be better;) but the ſaid count was adjudged ſufficient, and the word *manerium* ſurpluſage. *Simile poſt M.* † 15. *fol.*

* [305. a.]

Dy. 286. a.

Br. Feoffment 14.

[Cro. Eliz. 286.]

14. H. 8. 13.

Finch fol. 18.

A. gives *B.* all his trees, and cuts them down, *B.* takes them away. In treſpaſs by *A.* "*wherefore B. cut them down, and took them away,*" he may plead not guilty to the cutting and juſtify the reſidue.

Br. 59. Perk. 58. Dy. 27. & 90. pl. 8. 33. H. 6. 11. 12.

(57) A MAN gives me all the trees growing in his cloſe, and notwithſtanding this he himſelf cuts them down, and now I take and carry them away; and he brings treſpaſs againſt me, "*wherefore by force and arms* "*I cut down his trees, and took and carried them away*" &c. Now I may plead as to the cutting down, not guilty, and juſtify

juſtify the reſidue. Yet *quære*, Whether the firſt plea does not go to the whole in this writ.

[Cro. El. 268. 2. Ld. Raym 231 3. Term Rep 296, 297. 1. Hen. Bl. 555.]

Daniel *againſt* Luker.

(58) ONE *Daniel*, late citizen and goldſmith of *London*, among divers goods and chattels which he had as well in *Ireland* as in *England*, had a bond of eighty pounds made in *Ireland*, by one *Lucre*, a merchant of *Waterford*, in *Ireland*. *Daniel* died inteſtate in *England*, and his ſon obtained letters of adminiſtration from the Archbiſhop of *Dublin*, of all the goods and chattels of his father within that province, and afterwards made a releaſe of the ſaid debt and the action thereof to the ſaid *Lucre*. And afterwards the widow *Daniel* obtained of the Archbiſhop of *Canterbury* letters of adminiſtration of all the goods, chattels, and credits, of the ſaid inteſtate within his province, and got poſſeſſion of the bond: and upon that as adminiſtratrix, ſhe ſued *Luker* in *London*, ſuppoſing the bond to have been made there, *ſ.* in the pariſh of *Saint Mary le Bow*, in the ward of *Cheap*: and this releaſe pleaded

If an inteſtate have *bona notabilia* in *England* and in *Ireland*, there ſhall be ſeveral adminiſtrations by the ordinary in each country for all within his province.

A bond is *bona notabilia* in the dioceſe, where it is at the time of the death.

21. H. 6. 28 b. 11. H. 7. 16. a. 6. Co. 46. b. 1. Ro. Ab 908 1. Saund. 274. 10. H. 7. 18 b. Plo. 519. b. 14. H. 6. 21.

(58) Treſpaſs by † *Caſebolt* v. *Caſebolt*. It was found that one *Caſebolt* died inteſtate at *Ely* poſſeſſed of divers goods there, and that a ſtranger, commorant at *London*, was indebted to him in five pounds thirteen ſhillings and four-pence. And that the official of *Ely*, the ſee being vacant, committed the adminiſtration to the defendant; and that the Archbiſhop committed the adminiſtration to plaintiff; and the Civilians ſay, that the debt is *bona notabilia* where the debtor dies; and *Kempe*, Secondary, ſaid, that it was ſo adjudged by CATLIN; wherefore WRAY ſaid, Let judgment be given for the plaintiff. *Hil.* 30. *El.* rot. 522.

30 *El. Croft*'s caſe, [Godb. 33.] A Biſhop of *Ireland* being in *England* may commit adminiſtration of goods within his dioceſe. *Mich.* 35. & 36. *Eliz.* † *Butterfield* v. *Beamond*, debts due on bond in another dioceſe, are *bona notabilia*.

Trin. 17. *Jac. C. B. Trowbridge* v. *Taylor*; a man died inteſtate, having debts due to him in ſeveral dioceſes upon ſeveral bonds; *per Cur.*' The debts ſhall be *bona notabilia* where the bonds are, [† and not where the debtor or debece are. 3. D'Anv Ab 353. 11. Vin. Ab. 79 Godolph. 72. 1. Rol. Ab. 909.]

An annuity for years out of the parſonage ſhall be *bona notabilia* where the parſonage is;—adjudged.

Trin. 19. *El.* rot. 876. *B R.* between *Vere* and *Jeffries*, which was adjudged *Hil.* 22. *Eliz.* [Mo. 145 and ſee 4. Leon 211] One *John Trecher* lived in the county of *Eſſex*, and was there poſſeſſed of a term, and he had alſo ſold to the Queen certain corn at *Weſton*, *p* 40. *qu* at the price of forty pounds], the Queen being at her palace at *Whitehall*, the ſaid *Trecher* died inteſtate: and Whether the Official of *Eſſex* ſhall commit this adminiſtration, or Whether it belongs to the Archbiſhop of *C. ?* And all this was found by a ſpecial verdict, and it was adjudged *bona notabilia*; and that the Archbiſhop ought to have the prerogative, 5 Co. 30 a. *Mich.* 5. Jac. Sir *John Needham*'s caſe; [reported in 8. Co. 135. but not theſe points] It was agreed that debt on recognizance, judgment, or bond, ſhall be *bona notabilia*, where the recognizance was acknowledged, where the judgment given, and where the bond remains; but of ſimple contract COKE doubted; for it is *individuum vagum*. LYNDWOOD 86. *de teſtamentis*; they cannot be called *notabilia* if any man has leſs than one hundred pounds [ſhillings, Lyndw. Prov. Edit. Oxon. 1679. fol 174. *nota* (*m*) *in ve bona Laicis.*]

Debt on bond is *bona notabilia* where the ſpecialty remains, and this ſum ought to be above five pounds, by the canon 1. Jac. Canon 93.

† Orig. *as nemy.*

3. Cro. 472. Wentw. 166. [11. Viner Executor (H.) Com dig. Adminiſtrator (B. 3) (B. 4.) Wentw. 46, 47. Lovelaſs on Inteſtacy 6, 7. See Ambl. Rep. 26.]

11. H. 4. 116.

in bar. And the truth is, as it is ſaid, that the bond was made in *London*, and hath always remained there ſince. And alſo the obligee died at *Dunſtable*, in the county of *Bedford*. And therefore notwithſtanding the ſaid adminiſtration and releaſe in *Ireland*, the ſaid *Luker*, the defendant, ought to anſwer to the ſaid action above brought in *London*, by the opinion of the Court: and iſſue taken, Whether the obligation was and remained in *London* at the time of the death, or in *Ireland*. But the iſſue by the folly of the pleader was joined, Whether the obligation was in *London*, *s.* in the pariſh of *Saint Mary le Bow*, in the ward of *Cheap*. And the truth was, that it was in the pariſh of *Saint Foſter*, in the ward of *Farringdon within*, and not in the pariſh and ward aforeſaid, and † *ſo* found by the jury; and therefore he had not judgment, *quære*.

[2. Saund. 317, 318. 5. Term Rep. 71.] Br. lien 63.

† Orig. *iſſu* manifeſtly by miſtake for *iſſue*.

*[305. b.]

Treſpaſs by huſband and wife in lands of the wife *dum ſola*, the writ was to the damage of both, and the count laid with a *continuando* of depaſturing until the day of ſuing out the writ—*ge*.

Lit. 67. F. Nat. 87. h. 19. E. 3. Bre. 246. 49. E. 3. 6.

[Bunb. 277. W. Jones 325. pl. 5. 2. Wilſ. 423, 424. 3. Term Rep. 627. 2. Black. Rep. 1236. 1. Hen. Bl. 108.]

(*59) TRESPASS was brought by the huſband and wife, wherefore with force and arms the cloſe of the ſaid wife whilſt ſhe was ſole he broke, and her graſs of the value &c. and other injuries to them did, to the great damage of them the plaintiffs &c. And in the count, a continuance of the treſpaſs, as to the depaſturing &c. from the day of the treſpaſs until the day of the writ &c. And the defendant pleaded not guilty, and the verdict paſſed for the plaintiffs, and damages aſſeſſed for them &c. But note, by 7. *H.* 7. fol. 21. [2. pl. 2.] and 21. *H.* 6. [30. pl. 16.] and the *Regiſter*, fol. [94. b.] 95. the words *whilſt ſhe was ſole* are omitted in the writ, and only mentioned in the count: but the writ was, the cloſe, or goods and chattels of the woman &c. And *T.* 37. *H.* 6. 26. A writ of waſte was brought againſt a woman which was *quamdiu ſola fuit*, and the writ was abated; for it ſhall

Dy. 84.

(59) Error on a judgment given in Treſpaſs wherefore he broke the cloſe and cut their corn, brought by a huſband and wife: the judgment was reverſed; becauſe a *feme covert* cannot have corn in common with her huſband; and if it had been that the corn was to them in common before the coverture, it ought to have been ſhewn: for the count ſhould have a general intendment and not a ſpecial one. *E.* 31. *El. B. R.* [3. Cro. 133.]

Note, The difference between this caſe and a caſe which was adjudged 30. *Eliz.* Treſpaſs, for that he broke the cloſe, mowed the graſs there growing, made thereof twenty cart-loads of hay, and carried them away, was brought by the huſband and wife, and for a † *chattel*: but becauſe the hay depended upon the breaking of the cloſe, and only one treſpaſs there, for that, the writ was adjudged to have been well brought by them both. [Cro. Eliz. 90.]

† Orig. *Challenge*.

be

be *ad terminum vitæ*. Such a caſe was moved in arreſt of judgment in the *Michaelmas* Term next, in treſpaſs for breaking the cloſe of them the huſband and wife &c. *and chaſing their ſheep* &c. and as to the chaſing, not guilty was pleaded, and ſo found: and the other treſpaſs, *s.* for breaking the cloſe was juſtified and found for the plaintiff, and damages aſſeſſed therefore accordingly. And Whether judgment therein can be given upon this original, which is faulty in the words *their ſheep*, wherein a *feme covert* cannot have property, *Curia adviſatur*. But it may be that theſe two treſpaſſes were made to the plaintiffs, being joint-tenants or tenants in common, before the coverture between them; but that ought to have been ſhewn in the count.

7. H. 6. 9. b.

(60) THE Biſhop of *Norwich* certified to the writ directed to him upon a plea of *ne unques accouple in loial matrimony*, in dower, that the huſband of the demandant at about the age of twelve years, and the demandant at the age of ſixteen years, contracted matrimony *per verba de præſenti*, and procured it to be lawfully ſolemnized in the face of the church at *B.* in the county of *Norfolk* &c. Whether this return be ſufficient or not, *quære*. And by the opinion of the Court it was holden inſufficient, becauſe the right of marriage is triable by the Eccleſiaſtical Judge, and not by the Temporal. Wherefore a new writ *de melius certiorando* was awarded to the ſame Biſhop; to which he anſwered, that the age of the huſband was eleven years, ten months, and twenty days, at the time of the eſpouſals ſolemnized, omitting the *procuraverunt*; but the Court was not ſatisfied with this for want of certifying the legality of the marriage; and the Biſhop was fined twenty pounds. More of this matter *poſtea*, fol. 313.

To the writ for his certificate on a plea of *ne unques accouple*, the Biſhop muſt expreſsly return the lawfulneſs or unlawfulneſs of the marriage, ſpecially returning eſpouſals at certain ages is bad. [Dal 79 pl 16. S. C.] Dy. 369. pl. 48. 49. E. 3. 18. Dy. 368. b. [Cro. Car. 352. Barnes 1.]

(61) IN debt againſt one as executor, he pleaded *ne unques executor, nec adminiſtravit ut executor*; and the plaintiff

A plea of *ne unques executor* is well ſupported by evidence of letters of

(61) Between *Palmer* and *Lytherlands*. [Lat. 160. 267.] *Mich.* 2. *Car. B. R.* JONES Juſtice, ſaid, that when he was in *C. B.* it was queſtioned how an adminiſtrator, who had waſted the goods *durante minoritate*, ſhall be charged after the age of the infant; and there the opinion was,

administration, before he acted at all. Yet letters of administration might be pleaded in abatement by one charged as executor. [12. Vin 188. 5. Mod. 145, and the cases cited in Salk. 296. pl. 4] 1. E. 4. 2. 30. H 8 41. Dy. 183. a. 276. a. 12. H. 8. 1. 2. Brn. 185. 28. H. 8. 29 done. 9. E. 4. 40. a. 21. H. 6. 8. 23. debate. Went. 248. 5. Co. 82.

plaintiff replied, that he did administer as executor of the will &c. *prist.* And in evidence, the defendant shewed letters of administration committed to him of the goods of the deceased, wherefore he administered them, and before that he had never administered. As it seems it is good evidence; for he administered as administrator by authority, and not of his own wrong: yet he might have pleaded this matter in abatement of the writ, naming himself executor &c. *Quære.*

was, that he shall be charged as executor *de son tort.* Dodderidge and Jones denied this; and that he shall be charged with the special matter. [Noy 86. Bul. ni. pr 144, 145.] If *A* administer as of his own wrong, and afterwards administration is committed to him now he shall be sued as administrator, and not as executor *de son tort demesne.* [Bul. ni. pr. 143, 144. see 10. El. 102.] 9. *E.* 4. 33. 2 *R.* 2. [3.] 20. 20. *H.* 6. 1. 21. *H.* 6. 8. but Cro. 127. that the debtee hath election, by which name he will sue.

One was condemned in *sci. fa.* on a recognizance in Chancery, the Warden informing the Court that he was in the Fleet *pro certis causis*, the Court order him to be detained in execution thereof, this is ill: 1st, Because no *capias* lies in this case; but only *fi. fa.* or *elegit.* 2dly, He should at any rate have been brought up by *habeas corpus*, and questioned as to his identity. 3dly, Because the plaintiff never prayed this sort of execution, and perhaps would elect some other. But in an action of debt on such recognizance a *ca. fa.* lies. 2. Bulst. 63. 5. Co. 89. 2. E. 4. 9. Plow. 68. 2. H. 4. 9. R. 149. 50. Dy. 297.

(62) *E. PUTTENHAM* was condemned by default in *scire facias* in the Chancery at the suit of *Paine*, upon a recognizance made there. And after judgment, in the Term next following, information is given by *Onslow*, Warden of the *Fleet*, to the Court of Chancery, that *E. P.* the defendant, *pro certis causis* was in his ward and prison of the *Fleet.* Upon which information, without any request or notice of the plaintiff, a charge or order was given by the Court to the Warden, to keep and detain the body of the defendant there safely in execution, without enlarging him until he had made satisfaction to the plaintiff. And afterwards the Warden (the plaintiff not being satisfied) permitted and suffered the prisoner to go at large with a keeper upon his business, and took a recognizance from him to save harmless the Warden against every party. And afterwards the plaintiff sued the Warden in *C. B.* by bill of debt for the sum of the recognizance; and counted upon the recognisance and recovery by judgment in the *scire facias*, and shewed the manner of the execution, and of the escape as above. To which bill the Warden appeared, and imparled until another term; and afterwards brought a *scire facias* in the Chancery, against *Puttenham*, upon the recognizance made to him, who pleaded that the plaintiff was not damnified; to which the plaintiff replied, shewing all the case above,

Dy. 185. 187. 5. Co. 24.

and the proceedings in *C. B.* againſt him by *Paine*, as above, and concluded his plea with an *et ſic fuit damnificatus* &c. (63) And thereupon *Puttenham* demurred in law. And it ſeemed by the opinion of HARPER, WESTON, and DYER, Juſtices of *C. B.* that the Warden of the *Fleet* was not legally damnified, becauſe he was not by law chargeable for the ſaid eſcape; for the priſoner was never legally in execution to the party plaintiff for the debt, for three reaſons :—Firſt, Becauſe the Court of Chancery hath not any authority to commit the body of a defendant, condemned in *ſcire facias* upon a recognizance, to priſon for execution, becauſe his body is not liable, but his goods, lands, and chattels only: and this by *fieri facias* or *elegit*, under the ſtatute of *Weſt.* 2. c. 18. And the tenor of the recognizance expreſſes this; which is *to be levied of the goods and chattels, lands and tenements, into whoſe hands ſoever they have come &c:* and then no *capias ad ſatisfaciendum* lies in the caſe, becauſe no proceſs of outlawry lies there upon the original proceſs. The ſecond cauſe is, That admitting the authority of the Court &c. ſtill the information of the Warden of the *Fleet* made to the Court, of the priſoner who was not committed to him for this execution, but *pro certis cauſis*, is not ſufficient matter for ſtaying and detaining the priſoner for this condemnation, without a writ of *habeas corpus*, and view, and demanding of the priſoner if he be the ſame perſon who is condemned, or not; which is the office of the Court to oppoſe to him &c The third reaſon is, Becauſe the order and commandment of the Court made to the Warden of the *Fleet* for the detention of the priſoner for this condemnation without enlarging him (the plaintiff not being ſatisfied) was not made at the requeſt of the party plaintiff, for it may be that he would chooſe another execution &c. wherefore &c. But if an original writ of debt be brought at common law againſt the conuſor,

Dy. 297. a. 8. Co. 148. 1. Ro. Ab. 897. 7. H. 4. 34. Kitchen 117.

[But ſee the books in margin. of Gilb. Executions 82.]

[10. Vin. 574. 581. Com. dig. Exon. (C. 9.) (C. 11.) Gilb. Executions 68, 69.]

2. H. 4. 6. 11. H. 7. 15. Execution 164. 47. E. 3. 5. 49. E. 3. a. 18. H. 6. 18. 7. E. 3. 5.

1. Ro. Ab. 895.

Dy. 214. 361.

7. H. 6. 19. a. 22. H. 6. 15. a. 7. H. 8. f. 36. H. 6. 2. F. Nat. 122. d. 15. H. 7. 18. a. 3. E. 4. 27. a. 3. Co. 15. a. [1. Crompt. Pract. 344.]

(63) *Trin.* 25. *Eliz.* + *Martin* v. *Nelver* ſo ruled. And ſo in the Chancery upon an award of a *capias* on recognizance, *Trin.* 31. *El.* which was *Clement Paſton*'s caſe. [Mo. 274. 2. Leon. 84. Cro. El. 165.] 1. Jac. Cro. 3.

M. 42. & 43. *El.* Rot. 446. *Preſton* v. *Perton*, [Cro. Eliz. 817.] one recovered in *ſcire facias* upon a recognizance in *B. R.* and brought debt upon the judgment, and recovered in *C. B.* Whether now he may reſort to have execution out of the judgment in this Court? And it was moved that he cannot: and compared to the ſuing of an *elegit*, after which he cannot reſort to the other execution; but POPHAM, GAWDY, and CLENCH, *e contra*: and that this action of debt is no ſuing out of execution on the judgment, and adjudged for the plaintiff. [Com. dig. Execution (I. 1.) 1. Term Rep. 273.]

and

and the count be upon this recognizance and failure of payment at the day &c. by which an action accrued to the * plaintiff &c. there the defendant being condemned, a *ca. ſa.* lies, and his body ſhall be in execution; for there the plaintiff waives the ſpeedy remedy, *s.* the *fieri* or *ſcire facias*, which is founded on the record, and hath elected the other remedy &c. and he ſhall not have execution of lands and tenements, which the conuſor had on the day of the recognizance made, as he might have on the *ſcire facias*, but of lands and tenements which he had on the day of the judgment given upon the original writ. And this is the practice of *C. B.* by *Lone* Prothonotary.

25. H. 7. Cro. 100. 48. B. 3. 14. Dy. 192.

2. Ro. Rep. 218. 9. H. 6. 2. a. 2. H. 4. 14. 21. E 3. 51. 14 E. 3. Execution 72. 8. Co. 171.

If on a *melius inquirendum* after 9 *E.* 6. tenure of the King, as of a manor, be found, *ſed per quæ ſervitia juratores ignorant*, it ſhall be taken for knight-ſervice.

Co Lit. 77 b. Dy. 156. 292. Raſ. Eſcheator 15. Cro 199. pl. 10. B. N. C. 143. 17. H. 7. Cro. 33. Dy. 161. 2. Inſt. 691. 13. H. 7. 5. a. 26. H. 8. 9. b.

[12. Car. 2. c. 24.]

(64) AN office was found uncertain, *s. de quo vel quibus vel per quæ ſervitia juratores ignorant*, upon which a *melius inquirendum* was awarded after the ſtatute of 2. *E.* 6. c. 8. And by that a tenure was found of the Lady the Queen, as of the manor of *D.* &c. *ſed per quæ ſervitia juratores penitus ignorant.* What tenure that ſhall be intended, was the queſtion in the Court of Wards. And by the opinion of the Court, holden, That it ſhall be intended the beſt for the † *Queen*, as ſuch office would be found at common law, before the ſtatute of 2. *E.* 6. which excludes only tenure in chief by ſuch an uncertain office as above; wherefore it was holden to be a tenure by *Knight*-ſervice only, and not *in capite.*

† Orig. *recogn.*

In Cur'. Ward.'

If the grantee of the body only do not tender marriage to the ward who dies of full age, the Court of Wards will not retain the lands at the prayer of the grantee.

21. E 4. 43. 9. El. 255. b. 2. H 7. 9 a. 40. E. 3. 6. Stat. Merton ca. 6, & 7. Raſt. Wards 5. 2. Inſt. 91. [12. Car. 2. c. 24.]

(65) THE Queen granted the cuſtody and marriage of her ward, for the body only, to another: the ward died after his full age, and no tender made by the grantee; the heir of the ward being of full age ſued for livery, and the grantee demanded a ſtay thereof in the Court of Wards until he be ſatisfied of the value of the marriage. And his petition was not allowed by the opinion of the Court, for his folly &c. A like caſe, *E.* 9. [*El. ante.*] fol. 260.

Fines *againſt* Spencer.

(66) *RICHARD Fines*, Knight, brought an action upon the caſe againſt *J. Spencer*, Knight, for a Hawk, called a *Lanner*; and counted, that whereas he was poſſeſſed of the ſaid Hawk as of his own proper goods, at *Woodſtock* &c. he caſually loſt it at *Banbury*, which afterwards came there to the hands of the defendant by finding. And that he knowing the Hawk to belong to the plaintiff, ſold him for money and merchandizes, to divers perſons unknown &c. The defendant pleaded that the Hawk firſt after the loſs came to the hands of one *Geffries*, who ſold it to one *Rowley*, who gave it to the defendant, at *Althon*, in the county of *Nor.* and he ſold it to *Pulteny* &c. and upon this plea the plaintiff demurred in law. And this Term the matter was argued by the Juſtices; and SOUTHCOT argued for the plaintiff, but WHIDDON and CATLYN, *e contra*. And exception taken to the Count, becauſe it was not expreſsly alleged that the Hawk was reclaimed or tame, according to the caſe in 43. *E.* 3. [24. a. pl. 2.] for taking and carrying away his deer without ſaying *tame* &c. But SOUTHCOT ſaid, that the words *as of his proper goods*, implied all &c. And CATLYN's argument was much founded upon BRACTON, [*Lib.* 2. c. 1.] who was a Judge of the realm, *ut aſſeritur, de his feris vel feræ naturæ animalibus et volatilibus* * *quæ in nullius bonis ſunt.* And the caſes of a dead ſtag, and the dog called a bloodhound, 12. *H.* 8. fol. 3. & 9. were cited &c.

In trover for a hawk, the plaintiff muſt ſhew in his declaration that it was reclaimed.

7 Co. 18. 1. Cro. 18. 12. H. 8 4. 1. Keb. 60.

27. H. 8. 13. a. 43. E. 3. 24. a. Dy. 257. pl. 13. 304. 312. 346. 10. Co. 59. b 22. H. 56. 59. 36. H 6. 24. 10. E. 4. 18. 3. Cro. 125.

[1. Com. dig. 219. 5. Bac. Ab. 263. and ſee 2. Black. Com. ch. 25. 1. Hawk. Pl. C. 143. 144. 1. H. H. P. C. 511, 512.]

* [307. a.]

[2. Bl. Rep. 1117]

And afterwards judgment was given againſt the plaintiff, *s.* that the bar was ſufficient (*a*) &c. in this Term by CATLYN: and afterwards the matter was brought into *C. B.* by a new action upon the caſe for a reclaimed Hawk, called a Lanner, *cum tintinnabulis*, *s.* bells &c.

2. Bulſ. 202. 1. Keb. 53. 7. Co. 17.

(66) *Thomas Beauford*, Knight, brought an action of trover, and declared, and found for him; and he had judgment. Defendant brought a writ of error, and aſſigned; firſt, becauſe it is not ſaid that the hawk was reclaimed; but on the reading of the record it appeared that the plaintiff declared that he was poſſeſſed of a certain hawk called a Lanner, reclaimed; wherefore the exception taken was not allowed.
15. Car. Cro. fol. 545. Sir *Martin Liſter* v. *Home*.

(*a*) The plea now in this caſe would be only the general iſſue. See Bul. Ni. Pr. 48. 1. Com. dig. 224.

But

But by the award of DYER the matter was compounded for forty ſheep and one ram, given by *Spencer* from his flock at *Wormeleyton. M.* 14 & 15. of the now Queen.

[† Hilary Term,

14. Queen Elizabeth.

Hedley *againſt* Joans.

If *A.* on the 26th make a ſtatute to *B* and *B.* on the 27th makes and delivers a releaſe *up to the making of theſe preſents*, but dates it as on the 25th, ſtill the ſtatute is releaſed. *Secus* had it been *up to the day of the date*

9. Co. 52. b. 5 Co. 1. Co Lit. 46. Perk. 31. 147. 1. H. 6. 4. 1. H. 6. 49. 32. H. 6. 16. b. infra 315. a. 29. Aſſ. 47. 5. H. 7. 27. 1. H. 6. 49. 20. Aſſ. 47. 7. H. 4. 14. 3. Cro. 14. 12. H. 6. 1. cited in Godderd's caſe. 2. Co. 4.

(67) A STATUTE merchant was acknowledged and dated the 26th day of *July*, in the ſixth year of the preſent Queen; and the next day following *ſ.* on the 27th, the conuſee minding to releaſe all debts, actions, demands, and executions, due to him from the conuſor, (except the debt by the ſaid ſtatute) cauſed the conuſor to make a general releaſe &c. who did ſo by theſe words: "*All debts, demands &c. at any time due to me from the be-*"*ginning of the world until the making of theſe preſents, in* "*witneſs whereof I have ſet to my ſeal dated the XXVII day of* "*July, in the ſixth year*" &c. But the conuſee finding fault with this date, fearing leſt the ſaid ſtatute ſhould be alſo releaſed, cauſed two units to be eraſed, and XXV only to remain for the date; and after this immediately ſealed and delivered the releaſe as his deed. And upon this releaſe the conuſor grounded an *auditâ querelâ*, with an averment of its having been firſt delivered as the deed of the conuſee on the ſaid 27th day &c. which being denied, was found by the verdict to have been firſt delivered as the plaintiff ſuppoſed, for the truth was ſo. And yet on the back of the releaſe was written, "*ſealed and delivered* "*in the preſence of (four, by name) on the 25th day of July*" &c. But yet in law this releaſe is a diſcharge of the

† Though the top of this leaf in all the editions is marked *Hil.* 14. yet the caſe, which is the firſt of that Term, is not noted. But as I find it noted to this caſe in the old written hand in the edit. of 1592, in the *Middle Temple* Library, I have inſerted it here.

ſtatute

ſtatute and execution by the firſt delivery, being on the 27th, for that is the day of the making of the releaſe although it be not of the dating, for had it been *until the day of the date hereof*, the ſtatute had remained in force unreleaſed, although it was for the firſt time delivered after the date of the ſtatute.

[18. Vin. Ab. 342. Powel on Powers 496. &c. Shep. Touch. 69. 321.]

Clouther's Caſe.

(68) ONE proſecuted an action upon the caſe againſt a merchant, ſtranger, in *B. R.* in cuſtody of the Marſhal, the defendant pleaded to iſſue; and the iſſue is found for the plaintiff, with damages four hundred and fifty pounds. In the interim between the verdict and judgment, the defendant acknowledged a debt of one hundred and ſixty-ſeven pounds to the Queen in the Exchequer; for which he is committed to the *Fleet* in execution. After this, judgment is given in *B. R.* upon the verdict: and at the ſuit of the mainpernors an *habeas corpus* is directed to the Warden of the *Fleet*, who certified the cauſe, and brought the body into *B. R.*, and there he is committed to the marſhal in execution for both executions; and afterwards * a writ is awarded out of the Exchequer to the marſhal *ad habendum corpus*, by prerogative. Whether he is bound to obey this writ or not, *quære.*

Between verdict and judgment in *B. R.* defendant confeſſed a debt to the King in the Exchequer, and was committed in execution to the Fleet, and afterwards being brought into *B.R.* by *Hab. Cor.* is committed to the marſhal in execution on both judgments; the Exchequer ſends another writ to have the body by prerogative, *quære* if it muſt be obeyed.

29. E. 3. 13. by Greene. Dy. 297. 364. 1. Cro. 283. 18. E. 3. Office de Court 16. 2. Sid. 157.

[See Dy. 67. pl. 20. 152. pl 6. 197. pl. 44. & 245. pl. 65.]

* [307. b.]

† Fenton *againſt* Forſter.

(69) THE termor of a meſſuage for forty years deviſed and gave *the meſſuage* by his will, without limitation of what eſtate he gave: this ſhall carry the entire term, for the deviſee cannot have any eſtate in the houſe at will, nor for term of life, nor for the term of any years, or a year; therefore the whole term paſſed, by the opinions of the Juſtices of the Bench.

Deviſe of a *meſſuage* by the termor, without declaring any eſtate, paſſes the whole term.

7. Co. 23 2. E. 4. 11. Perk. 693. R. 411. 3. Bulſt. 129. Went. 359. 2. Sid. 151.

[2 Bac. Ab. 63. and ſee 2. Bl Rep. 1301. 1. Hen. Bl. 26. note.]

[† See 1. Ro. Rep. 249.]

Crumwel

Crumwel *againſt* Broughton.

B. a termor underlets to *A.* who lets to *C.*—*A.* having granted all his intereſt to *B.*, *C.* refuſes to attorn, or pay any rent—*qu.*

Perk. 693. 2. E. 4. 11. Dy. 26. 123. pl. 44. 887. pl. 5. 4. Co. 51. Dy. 349. b. 14. H. 7. 3. 9. Co. 96. a. 1. Keb. 1.

[By 4 Ann. c. 16. §. 9. Attornment is rendered unneceſſary, Doug 282]

(70) THE termor of a rectory for ninety-nine years leaſed it for the term of forty years, rendering twenty-four pounds *per annum*. The leſſee for forty years leaſed it over for fifteen years, rendering the rent of twenty-four pounds and twenty quarters of grain *per annum*. And afterwards the leſſee for forty years granted and aſſigned by deed all his term, intereſt, and reverſion, with the ſaid rents of twenty-four pounds, and grain, to the firſt leſſor; and the leſſee for fifteen years refuſed to attorn, and to pay any more rent to the grantee or grantor: *quære*, between *Crumwel* and *Crumwel* and *Broughton*, for the rectory of *Great Stukeley*.

Eaſter Term,

14. Queen Elizabeth.

Vaviſor's Caſe.

A woman ſeiſed by deſcent *ex parte paternâ* (intending to marry *B.*) by recovery and deed, grants to herſelf and *B.* a fee, by miſtake. She may correct this after marriage, by a ſecond deed between herſelf and *B.* and *C.* (her heir *ex parte paternâ*) *B.* and ſhe covenanting to ſtand ſeiſed in *ſpecial tail* only, with remainder to *C.* as was intended before. And *C.*'s relationſhip is conſideration ſufficient to raiſe an uſe.

[Vin. Fine (Q. a.) and (P. a.)]

1. Leon. 200. 1. And. 261. Roll. contin. 68. 5. Co. 26 a.

(71) A *FEME Sole* having land by deſcent from her father, ſuffered a common recovery againſt herſelf, to her own uſe in fee, in the ſixth year of *H.* 8. and afterwards willed, notified, and granted by indenture between her and one *A. B.* (whom ſhe intended to marry) that immediately after the marriage ſolemnized, the recoverors, their heirs and aſſigns, ſhould ſtand and be ſeiſed to the uſe of the ſaid huſband and wife, *and of their heirs for ever*, and to no other uſe. The marriage took effect; and afterwards the recoverers (having notice of the indenture and marriage) executed by deed an eſtate to the huſband and wife, and *to their heirs in fee*, without any uſe expreſſed. After that the huſband and wife by indenture made between them, and the next heir apparent

rent of the wife, on the part of the father; reciting, That inaſmuch as the land came to her by her ſaid father; and as ſhe had not any iſſue of her body, notwithſtanding the purport of the indenture and conveyance aforeſaid, the true intent was, only, that the iſſue lawfully begotten, iſſuing of the body of the ſaid wife, ſhould inherit the land, and for default thereof her next right heirs; and it was by the ſaid indenture fully concluded, bargained, and agreed for them and their heirs, that the huſband and wife in future ſhould thereof ſtand and be ſeiſed to the uſe of themſelves *in ſpecial tail* &c. and for default of ſuch iſſue, of the right heirs of the wife, and to no other uſe; with a covenant beſides from the * huſband, that if the wife ſhould die without iſſue, he living, he would, upon requeſt &c. execute an eſtate to the ſaid heir-apparent of the wife in fee, to the uſe of the ſaid huſband for the term of his life only, and afterwards to the uſe of the ſaid heir-apparent in fee: which covenant in eſtate was never executed. And afterwards and before 26. *H.* 8. the wife died without iſſue, and the huſband ſurvived and continued ſeiſed after the ſtatute of 27. [*H.* 8. c. 10.] and died ſeiſed. Whether his heir or the ſaid heir-apparent of the wife ſhall have the land, *quære*, upon a ſpecial verdict on a joint-tenancy pleaded in a writ of *quibus* in abatement of the writ. (72) And afterwards, in *Hilary* Term, counſel being heard on both ſides at our Inn, in *Fleet-ſtreet*, by ALL the JUSTICES of *C. B.* it was reſolved for the heirs of the wife; and that the uſe of the firſt indenture and conveyance, which ſpeaks of *their heirs*, was miſtaken and miſunderſtood by the wife; ſo ſhe was deceived, for her intention was, *their heirs of their two bodies begotten:* ſo the firſt indenture is corrected by the ſecond. But admitting that it be not a ſufficient change of the firſt uſe, *s.* that the aſſurance was only in tail, remainder to the right heirs of the wife, ſtill the uſe is ſufficiently altered by the ſecond indenture, without any eſtate executed; for the conſiderations are reaſonable and ſufficient, becauſe the land moved by the wife, and was given to the huſband by her: And her next heir of the part of her father, from whom the land deſcended, is to be favoured and advanced by the wife rather than ſtrange blood, *s.* the blood of

Dy. 166. Br. Eſtates 14.

* [308. a.]

Dy. 162.

[Com dig. covenant(G. 3.) 3. Term Rep. 474.]

[5. Bac. Ab. 362, 363. Com dig. covenant(G. 3.)] Plow. 298. 306. 309.

of the huſband, &c. Wherefore &c. A ſimilar caſe of *Baynton*, [Plow.] Com. 300. b.

Cobham's Caſe.

By ſtatute, all contempts and executions are pardoned; but piracies are excepted; whether the puniſhment of one for ſtanding mute on an indictment for piracy be pardoned—*qu.* But he may be indicted *de novo*, for another piracy committed at the ſame time with the former.

[Ante 241. b. pl. 49.]

Dy. 141. b. 235. a. Co. Lit. 381. 6. Co. 13. Plow. 172. a. 4. El. 214. b. 4. Co. 40. a. Plow. 397. 18. El. ca. 7.

[2. H. H. P. C. 252.]

(73) *COBHAM* (before the laſt general pardon) was for piracy condemned to ſuffer the penalty of *peine fort et dure*, but not put in execution; and by the general pardon all contempts are pardoned, pains, and executions, &c. but all piracies are excepted. It was moved for the Queen by the Attorney-General, Whether he may be impeached anew, and arraigned for the piracy aforeſaid, or may be indicted *de novo* for another piracy or robbery committed upon the ſea at the ſame time, or not? On the firſt point the Judges and Queen's Counſel were of different opinions, by reaſon of the judgment of penance, and the execution thereof; in which no attainder or conviction of the offence is mentioned. But on the other point, the greater part thought that he may well enough be indicted and put to anſwer.

Lord Paget's Caſe.

Tenant by knight-ſervice *in capite*, having levied a fine to himſelf for life, remainder to his eldeſt ſon in tail, remainder to his youngeſt in tail, remainder to his own right heirs, dies; the eldeſt having ſued livery, and paid the value of the third part of the land in poſſeſſion, under 32. *H.* 8. c. 1. and a moiety of the remainder in fee, with livery according to the uſual rate, as claiming by deſcent; the King once ſatisfied, ſhall not have the benefit of the ſtatute againſt the youngeſt when his eſtate commences; but he alſo muſt ſue livery for the remainder to the right heirs.

* [308. b.]

10. Co. 82. a. Co. 8. 165. a. 6. Co. 131. Co. Lit. 78.

(74) THE Queen's tenant *in capite* levied a fine *ſur cognizance de droit come ceo* &c. and took back an eſtate to himſelf for term of life, remainder to his eldeſt ſon, and to the heirs male of his body begotten, remainder over to his ſecond ſon, and to the heirs male of his body begotten, remainder over to the right heirs of himſelf, the Queen's tenant, and died. The eldeſt ſon at full age ſued out livery, and paid the value of the third part of the land in poſſeſſion, and the moiety of the remainder in fee-ſimple of the entire land, according to the uſual rate. And afterwards he had iſſue a daughter, and died * without iſſue male. The daughter, by office found, is in ward to the Queen. And the youngeſt ſon entered as into his remainder. And afterwards the daughter died in ward without iſſue; and the youngeſt ſon, who is uncle and heir to her, and alſo right heir to the grandfather, is now to ſue out livery. And Whether he ſhall pay the third part of the land *per annum* for the remainder in tail, and the moiety of the value of the remainder in fee as heir to his niece;

was

was doubted. And *Plowden* and others of counſel, with Lord *Paget*, held ſtrongly, That neither for the remainder in tail, nor for the remainder in fee, ought he to ſue out livery, becauſe the Queen was once ſatisfied for the third part of the remainder in tail by the eldeſt ſon, and likewiſe of the remainder in fee. And then the ſtatute of 32. *H.* 8. c. 1: the third article, by ſuch diſpoſition for the advancement of children, but one livery for all the children advanced (albeit one ſucceeds to another by way of remainder or jointly) is to be ſued out by this branch. And the ſaid two ſons were in by one and the ſame diſpoſition, and *quaſi* in one degree with reſpect to the diſpoſer &c. And for the fee-ſimple they ſaid, that the ſecond ſon is in, as right heir to his father, and not to his niece, although the fee-ſimple is in him by deſcent; for if the uncle was of the half blood, he ſhould have the remainder in fee, according to the caſe of the *Provoſt of Beverley*, 40. *E.* 3. fol. 9. and the caſe of *Skrene*, 15. *E.* 4. fol. 10. *ſimile.* But on this point *Plowden* yielded. And it was reſolved at another time, by the opinion of the Court and Queen's counſel of wards and liveries, That whether he be in as heir to the niece, and [or] as right heir to his father or brother, he ought to ſue out a livery thereof. But for the other point the Court would adviſe until this Term. See *ante* fol. [235. b. pl. 22.]: and afterwards in *Eaſter* Term, 15 of the now Queen, livery was ſued out for the remainder in fee as above; and as for the remainder of the third part in poſſeſſion, the Lord *Paget* compounded for two parts of that third part; and for the third part of that third part he went clear.

So it was adjudged in one *Northcot's* caſe, Eaſt. 32. Eliz. Cur' Ward.' 2. Co. 94. ro. Co. 80. b. 82. a.

Raſt. Wills. 3. 12. El. 281. a.

Fitz. Nat. 145. 37. Aſſ. 4. Fo. 2. 3. 9. a. 7. H. 3. 5. b. 1. Mar. 90. a. fol. 2, 3. &c. 15. E. 4. 11. b. Ley 19.

2. Leon. 27 Mo. 97.

[But 12. Car. 2. c. 24. aboliſhed the feudal tenures, and all their conſequences.]

Winter's Caſe.

(75) A LEASE for a term of years is made of the manors of *A. B.* and *C.* by indenture rendering annually to the leſſor, his heirs and aſſigns, for *A.* ten pounds,

Leaſe for years of three manors, rendering rent for each, with re-entry on non-payment of any part; the reverſion of parcel is granted to *A.*

(75) *Hil.* 36. *Eliz. C. B.* rot. 1323. † *Granger* v *Gravenor.* The Preſident and Scholars of *Mary Magdalene College*, in *Oxford*, demiſed to *Hugh Haniſton* and *Margaret* his wife, the *Boar's Head* in *Southwark*, for twenty-one years, ſo as the huſband and wife or their aſſigns, or any of them, ſhould not ſubſtitute any under-tenant of the premiſes, or any parcel thereof. And it was further provided, that it ſhould not be lawful for the aforeſaid *Hugh* to ſubſtitute any other to be tenant of the premiſes during the natural life of the ſaid *Margaret.* The wife died, the huſband granted

and by bargain and ſale, the reverſion of the reſidue to *B*.—Adjudged that a bargainee of a reverſion is a grantee within 32 *H.* 8. c. 34. to take advantage of a condition broken; and that theſe rents are ſeveral; but a bargainee of parcel only cannot enter.

If the reverſion of a leaſe for years be ſevered in any part, the entire condition reſerved upon the leaſe ſhall not be deſtroyed, if the ſeverance be by deſcent, eviction, or act of the law. *Secus* if by act of the party.

1. H 6. 4. 17 E 3. 52. 17. Aſſ. 10. Hob. 172. 17. E 3. 75. b. Co. 4. 120. a. 5. Co. 55. b. This caſe well argued by the Judges and Serjeants in Yelverton's Rep. fol. 208.

* [309. a.]

5. Car. Cro. 156. 3. Leon. 254. 4. Leon. 187. 8. [19. Vin. 113. 1. Ld. Raym 423. Caſ. Tem. Hardw. 246. Bac Ab. Rent (E). Shep. Touch. 78. Powel on Powers 568, 569. 1. Term Rep. 445.]

26. H. 8. c. 16. Raſt. Enrolment 2. Raſ. Condition 65. Godb. 336. 2. Rol. Ab. 448. 17. E. 3. 75. 3. Cro. 341. Mo. 98. contra. 29. E. 3. 38, 39. b. Kell. 134. 9. Aſſ. 24. 17. Aſſ. 10. 22. Aſſ. 52.

pounds, for *B.* ſix pounds, and for *C.* four pounds, at the feaſt of &c. and payable at a place out of the manor; with a condition, for nonpayment of the ſaid rents, or any of them, or any part or parcel of them within one month next after the ſaid feaſt &c. to re-enter into all the ſaid three manors. After this the reverſion of one meſſuage and forty acres of land, parcel of the ſaid manor of *A.* is granted by the leſſor in fee to a ſtranger, and the leſſee attorned. And afterwards the leſſor bargained and ſold the reverſion of all the reſidue of the three manors in fee by indenture, enrolled within ſix months, according to the ſtatute; and the leſſee attorned alſo. And for the rent of another of the manors in arrear, the third vendee in ſucceſſion, as aſſignee by the ſtatute of 32. *H.* 8. [c. 34.] entered upon the leſſee into all the ſaid reſidue of the three manors for the condition broken, *quære.*

The caſe was argued in ſubſtance at the Bar and Bench, and three points [made.] * Firſt, Whether the ſeveral reſervations of the rents ſhall be ſeveral tenures, demiſes, reverſions, and rents, and ſeveral avowries for them. And it ſeemed to divers Juſtices and Serjeants that they ſhall, *ſ.* MANWOOD, MOUNSON, and HARPER: but DYER, *e contra*, becauſe he hath not made divers ſundry leaſes, but one leaſe to one perſon, and one limitation of the eſtate, and therefore only one reverſion, to which the rents are incident. And the reſervations of ſeveral rents cannot change the nature of the reverſion which is the principal, and the rents the acceſſories. The ſecond, Whether the condition which was entire and comprehended

granted parcel of the premiſes:—adjudged a breach of the condition; for the firſt words make a condition; and the ſecond, That he ſhall not grant during &c. does not diſpenſe with the firſt words in which is no limitation.

8. *Jac. Briſcoe* v. *Briſcoe*, [Godb. 161.] adjudged where COKE ſays, that this was the opinion of the Judges in *Vener's* [*Winter's* caſe. And this was admitted by READER of the *Middle Temple*, in his lecture upon his ſtatute in the *Summer Reading*, 1621. And his idea was, that if a reverſion depending upon freehold, be granted for years, the grantee may not enter for a condition broken, becauſe he has only a chattel, and cannot enter for a condition to gain a freehold. And compare this to the conceit of PLOWDEN, That if a man make a leaſe for years upon condition, that if he or his executors do ſuch an act, they ſhall have for life; the leſſee dies, and the executors do the act, they ſhall not have for life, for as executors they ought not to have a freehold. But this is only a conceit. 28. *El.* 4. Co. 52.

Entered *Trin.* 11. *Jac.* rot. 969. adjudged *M.* 12. *Jac. B. R.* Serjeant *Atter* and another, plaintiffs, againſt *Hinning* defendant, [Ow. 151. 2. Bulſt. 281. 1. Ro. Rep 80.] it was adjudged by COKE and the other three Juſtices, without any doubt, that the grantee of part of a reverſion upon a grant for years, or for life, is within the ſtatute of 32. *H.* 8 to take advantage of a condition or covenant, † 4. Co. 64. 5. Co. 95. † 3. *Ed.* 3. Voucher 119. and 4. *Eliz. per Cur.* Co. Lit. 215.

hended all the leaſe, be ſeveral for each rent, and for default of payment of one of the rents the leſſor may enter in all? And it ſeemed to ſome, ſeveral conditions, but not to DYER. Yet all agreed, that by the grant of the reverſion of part of the lands, *s.* of the ſaid meſſuage and forty acres, the condition is confounded in all; for it is a thing penal and entire, and cannot be apportioned or divided. See thereof by *Brooke*'s Report, in his *Abridgement*, [tit. Condition, 193.] 33. *H.* 8. the leſſor entered by leaſe or ſurrender into part of the land, the entire condition is ſuſpended: and 1. *H.* 6. [4. b. pl. 17.] for a penalty *nomine pœnæ* in *ſcire facias*. And the leſſor may not enter into theſe lands for the condition broken; for then he might deſtroy his own grant, and therefore he cannot be as to that in his former ſtate &c. And this diſtinction agreed to by all, when the change is by the act of the party himſelf who made the condition; and when the change is by deſcent, eviction, or act of law. And the third is, Whether the third vendee ſhall be aided by the ſtatute? And it ſeemed to many that he ſhall, by the words "*to or by the leſſor*" &c. for that is the intent of the law &c. But all, except MOUNSON, thought that the aſſignee ought to be of the entire reverſion, as it was in the leſſor himſelf who made the condition, and not of part of the reverſion for divers inconveniences; nor the grant thereof of leſs eſtate than was in the leſſor at the time of making the condition. And alſo the reverſion ought to be dependant upon a leaſe for life or years, and not upon an eſtate tail. And that was the opinion of BROMELEY &c. Wherefore the opinion of the whole Bench was againſt the re-entry for the condition broken: and accordingly judgment was given in the next Term for the plaintiff.

[Shep. Touch. 153, 154, 155.]

5. Co. 55. a. Co. Lit. 215. b. 11. El. 234 b. 8. Co. 79. b. 4 Co. 129. 9. E. 4 1. a. Dy. 354. 212. Perk. 163. 3. Bulſt. 154.

So held per Curiam, in *Mallorie*'s caſe, 43. El. [5. Co. 111. b Ow. 69.]

20. H. 6. 33. a. 1. Ro. Ab. 473.

[Shep. Touch. 149. Com dig. Condition (O. 2.] Godb. 162. Plow. 170. a.

Co. Lit. 315. a. Moor's Rep. fo. 56. a. 5. Co. 95. 3. Co. 4.

Cranmer, Archbiſhop of Canterbury's Caſe.

(76) THE reverſioner in fee of a leſſee for term of years, in the fifth year of *Ed.* 6. granted the reverſion in fee by deed indented tripartite to the uſe of the grantor himſelf for the term of his life without impeachment of waſte, and after his deceaſe to the uſe of the

C. makes a feoffment *to the uſe of himſelf for life, and after his deceaſe to the uſe of his executors, and aſſigns for twenty years*, remainder over, and afterwards is attainted of treaſon, and dies inteſtate, without aſſignment. The crown

shall not have the term, for *C.* had no interest in it to forfeit; but if he had not been attainted, his executors should have had it by purchase.

1. And. 19.
2. Leon. 5.
3. Leon. 20.
Ben. 41.
Mo. 100.
[Bend. 207.]
} S. C.

Ante 150. a. Co. Lit. 34. b. 183. 153. 54. b. Dy. 314 pl. 96. Co. 66. 13. 4. b. 1. And. 264. Ben. 113

the executors and assigns of the grantor for the term of twenty years next ensuing after the death of the grantor. And afterwards the grantor is attainted of treason, by an act of parliament made in the first year of Queen *Mary*, [sess. 2. c. 16.] and by the act all his lands and tenements, goods and chattels which he had to his own use, are forfeited and given to the Queen, and vested in actual possession without office. Whether the term of twenty years be forfeited and vested in the Queen; so that after the death of the grantor, who died intestate, and without making any assignment, and no administration committed because he died attainted, the Queen may grant and have the term? this was the question on demurrer in * *ejectione firmæ*, after the expiration of the first term. (77) And it seems that the term is not forfeited. First, It seems that the intent and meaning of the maker was not ever to have the term in himself, for by the words, he has not reserved, or expressed, or limited the use of the term of years to himself, as he has done of the fee-simple of the use after the mention of the tail; for there he has expressed "*to the use of himself, the feoffor, and of his heirs.*" And there is no other donor or feoffor in the case but himself; and his own reservation or limitation of the use shall be taken most strong against himself, since he has departed with a larger estate before, *s.* the entire fee-simple. And if a man make a lease for life, remainder to himself for term of years, remainder over in fee, this is void to himself; but if it be to his executors, that may be good, if he make executors, and die before the lessee. And here two several uses are twice expressed, and in the plural number, *s.* to the use of the feoffor for term of his life, and after his decease to the use of his executors and assigns. And also the feoffees are put in trust, as well to the use of the executors and assigns of the feoffor as of the feoffor himself: and this use of the term shall be in the executors as a purchase to their own use; for the name of *the executors of J. S.* is sufficient name of purchase, as well as *the right heirs of J. S.*; and this term shall not be assets in him, for it is not limited to the performance of his will, but for his forfeit by his outlawry: and this term shall be in abeyance until &c. And upon a future contingency it shall take its first commencement in the executors and assigns,

1. Ro. Ab. 912. 14.
1. Ro. Rep. 81.
* [309. b.]
1. Co. 134. b. 3. Cro. 658. 666.
[2. Hawk. P. C. 638.]

Perk. 704. 7 E. 3. 19.
1. Co. 66. Dy. 15. b. Mod. Rep. 237.

[A man cannot reserve a less estate than he has already to himself, unless he parts with the whole, and retakes that less estate by way of use.]

Mar. 156. b. 1. H. 5. 8 b. 52. Ass. 2.

1. Co. 134. 46. E. 3. 31. Mo. 104.

aſſigns, by the will and nomination or aſſignment of the feoffor if he pleaſe; and in no perſon is it before &c. And by the ſtatute 27. [*H.* 8. c. 10.] the poſſeſſion veſts *in the ſame manner, form, quality, and condition, as the uſe was* &c. And there ſeems a great difference between the book caſes that have been put of leaſes made in poſſeſſion to one for term of life, and for a term of twenty years after, for executors, heirs, or aſſigns, as in 11. *E.* 2. [339.] and 16. *E.* 3. [*Fitz. Ab.* tit. *Quid juris clamat* 22.] and yet both unruled, in *Quid juris clamat*, ſuppoſing the leaſe for life only, without mention of the term in the fine, *quære* Whether he ſhall be compelled to attorn without a ſaving of the term by proteſtation? Alſo in covenant, 19. *E.* 2. [654.] it ſeems that the covenant made in the indenture of leaſe for life, that the executor or aſſignee of the leſſee have the term for ten years after his death [is good] becauſe the covenant there commences and veſts in the leſſee himſelf, and after his death in his executors. And † 15. *E.* 3. the ſon confirmed the eſtate for life of the leſſee of his father, and for a year after for his heirs or executors; a writ of waſte well lies there, ſuppoſing the demiſe for term of life only; and the term in remainder is no impediment to the action of waſte, whether the term be loſt or ſaved by the judgment; and ſo is 4. *E.* 3. [18. pl. 12.] in waſte ruled. (78) And 17. *E.* 3. [29. b. pl. 29.] leaſe for life remainder thereof for the term of eight years to the executors of the leſſee, they were received after the death of the teſtator to ſave their term in a *cui in vitâ*. But by that *non conſtat* whether this was as executors to the uſe of the teſtator, or to their own. And 22. *Lib. Aſſ.* [pl. 37.] is not ruled, where the grant was by the indenture of leaſe for life, that although the leſſee die within fifty years, yet it ſhould well be lawful for the leſſee to give or deviſe, to the wife, heir, or exe-

6. E. 3. Quid juris clamat 21. 29 E. 3. 25. Plowd. 292. a. 33. E. 2. Quid juris clamat 5. 9. E. 2. covenant 25. Br. 26. Weſt. Preſident Fines f. 48. ſect. 161. 49. E. 3. 5. 6. 41. H. 4. 34. b.

4. E. 3. 101.

4. E. 3. Waſt. 18. Reſceit 105. Co. Lit. 54. b. 46. E. 3. 17. a. F. Nat. 59. 22. Aſſ. 1.

(78) *Memorand.* 24th of *April* 1632, between † *Barnard Uthen* and others, againſt *Richard Godfrey* and others, by the *Lord Chancellor* it was referred to JONES, WHITLOCK, CROOKE, and HARVEY Juſtices to be conſidered. *Richard Godfrey* being ſeiſed of land, deviſed his land to the uſe of himſelf for life, without impeachment of waſte, remainder to *Owen Godfrey* his ſon of part of the land for life; and immediately after his deceaſe, then to the uſe of the executors of the ſaid *Owen Godfrey* for five years then next following, for performance of his will &c. remainder of other of the land to himſelf, and *Roberta* his wife, (for twelve hundred pounds portion) for jointure. Adjudged, That the limitation to the executors for five years is a good uſe, and ariſes well on the ſaid covenant, and that it is a good limitation in law; and that the ſame eſtate for years veſted actually in law in the teſtator himſelf, as was by all agreed. And this was written out of the certificate.

46. E. 3. 31. a. Dy. 150.

cutors, for the reſidue of the ſaid fifty years &c. But 11. *H.* 4. [34. b. *ad fin.* pl. 65.] in the writ of annuity, grant for term of * life, and twenty years after is good, and both eſtates are in the grantee *ſimul et ſemel*; for a term may depend after, and upon a freehold in one and the ſame perſon; but *e contra* the term cannot precede the freehold, but ſhall be merged, any more than a fee can remain after an eſtate for life in one and the ſame perſon; as gift to the father for life, remainder thereof to his right heirs, the fee veſts immediately in the father, and his heirs ſhall have it by deſcent, and not by purchaſe; for no man can make heirs but God alone; but executors a man may make. And in the one caſe, the particular eſtate is merged in the fee and remainder; but if leaſe be made to the father for life, remainder to his right heir for the term of twenty years after his deceaſe, this term is not in the father, but is in abeyance until after his death, and then it commences in his right heir, as a purchaſer by that name. And the reaſon is the ſame where a remainder is limited to his executors or aſſigns as the caſe above is. And as to the aſſets above 2. *H.* 4. [21. pl. 2.] and 3. *H.* 6. [3. pl. 4.] has this difference: If a man enfeoff one or more, upon condition that they ſhall ſell it, and diſpoſe of the produce for his ſoul; and he makes them his executors, and they ſell &c. this ſhall not be aſſets; but if this be of land deviſeable, or in uſe, and ſo deviſed to his executors for his ſoul, this ſhall be aſſets. (79) Another point was moved, in whom the uſe ſhould be during the term, for the term is not yet expired; and he in remainder in tail has entered. And it

[A leſs eſtate cannot precede a greater immediately in the ſame perſon, unleſs both are eſtates of inheritance; but it may depend upon and follow it.]

40. E. 3. 19 19 E. 2. Covenant 25. 46. E. 3. 31. 49. E 3. 5. a. 5. H. 5. 9. 8. Co. 87. 50. Aſſ. 1. 33. H. 6. 5. b. 40. E. 3 9. b. Co. 104. a. 7. E 3 64. b. 40. E. 3. 21 a. 42. E. 3. 9. 5. E. 3. 25. 9. E. 4. 18. a. acc.' 1. Co. 66.

3. H. 6. 3. b. 17. H 7. Cro. 44. 9. E. 4. 47. F. Execut.' 37. Dy. 151, 152, 264. R. 101.

(79) Entered 40, 41. *El. B. R.* rot. 2215. and adjudged *Trin.* 41. *El.* between *Spark* and *Spark* [2. Rol. Ab. 418. pl. 6. Cro. El. 665. 840. Mo. 666. Yelv. 9. Ow. 125.] Gawdy Juſtice, and the others thought, That if a leaſe be made to one for life, and for twenty years after his death, this is an aſſignable intereſt in him; but if it be by way of remainder or uſe, or limitation after his deceaſe, as here, then it is not an intereſt in him, but firſt commences in the executors or aſſigns: but Doddridge vouched a caſe in *C. B.* adjudged that it was an intereſt in him *quôcunque via data*. Co. Lit. 54.

Note. The Caſe in Dyer was agreed aſſets, 12. *Jac. C. B. per Curiam*, becauſe it comes in right of the teſtator.

So deviſe that the executors ſell, the money ſhall be aſſets: and ſo if land be deviſed to them to ſell; *contra* in a ſtranger; but if the ſtranger ſells, and pays part to the executor, it ſhall be aſſets *pro tanto*. Dyer 264. [b. pl. 51.] † 2. *H.* 4. 4. and by Nichols, if an executor will releaſe a truſt, it is a *deuyſavit*.

The cauſe of the judgment of the caſe in Dyer was, becauſe the ſaid term of twenty years was not ever in the ſaid *Thom. Cranmer*, Archbiſhop, to forfeit or give; but the uſe of it was limited to his executors, and he did not make nor could make any &c. wherefore this term was void and null, † nor in uſe, nor in remainder. *Bendl.* 92. [208.]

† Orig. *in uſe nec in remdr.*

eem

ſeems he may well do this, for it is not in the feoffees, ſince no uſe or profit was appointed to them, nor any conſideration, and no other perſon can pretend title to it, where no executors or aſſigns are made by the feoffor, wherefore &c. And *T.* 37. *H.* 6. [36. a. pl. 23.] If *ceſtuy a que uſe* will that his feoffees ſhall make eſtate to one for life, remainder in fee to one *I. S.*, if he refuſe the particular eſtate, ſtill the feoffees are compellable to make an eſtate to another for the term of the life of the former, with the remainder over to *I. S.* and this immediately. And if it be of land deviſeable, he in remainder may enter in the life of him who refuſes &c. Note the diverſity. And for this point all the Court agreed, That if it was not forfeited, the entry of him in remainder in tail was lawful, becauſe no other man has intereſt in it during the term. But for the principal point, *i.* Whether there was any term or intereſt in the leſſee for life, or he had in him only an authority, liberty, power, or faculty of aſſigning &c. MANWOOD argued, That he had an intereſt to forfeit, and by implication of law, he himſelf had a term and intereſt in him; and this by the caſes in 19. *E.* 2. [654.] & † 19. *E.* 3. and 20. [*E.* 3. *Fitz. Quid juris clamat* 31.] and 39. [*E.* 3. 25. b.] and 49. [*E.* 3. 5. a. b. pl. 8.] and 50. [Aſſ. 1. ad fin.] and by 11. *H.* 4. [34. b.] and this was the firſt caſe that he argued on the Bench after his being made a judge, *i.* on the feaſt of the Apoſtles *Simon* and *Jude*. And HARPER and DYER, *e contra*. And note, that CHOLMELEY, late Serjeant and Recorder of *London*, has omitted in his report, that CATLYN and A. BROWNE were of the ſame opinion in the firſt year of the preſent Queen, and CATLYN ſtill continues of the ſame opinion, and WRAY alſo. And afterwards judgment was given accordingly in that ſame term, MANWOOD and MOUNSON not oppoſing it. And MOUNSON was made a Judge after the argument at the Bench; and alſo he was of Counſel with the aſſignee of the patentee of the grant from King *P.* and Queen *M.* before &c. And in the next term, a writ of error was brought upon this judgment.

3. Keb. 339. Co 101. a 154. b. 3. H. 6. 47. Perk. 109. Plow. 544. b.

Ma. 100. Co. Lit. 54. b. well reſolved. Poulton 228. 19. E. 2. Covenant 25 32. E. 3 ibid. 5. 7. E. 6 B. 437. Br. 514. Wenew. 118.

Note, Serjeant *Bartlet* ſaid, that it was adjudged in *C. B.* 44. *Eliz.* that here was a forfeiture of a term; for the executors ſhall have it as executors, and as aſſets.

Three were jointly and ſeverally bound. In debt againſt two, on Oyer, the condition but not the bond was ſet out *in hæc verba*; on *non eſt factum*, the plaintiff had a verdict. The Court would not arreſt the judgment, as the entry on the roll did not ſhew that there were three obligors.
2. Leon. 219 27. H. 8. 6. b. 11. H 7. 16 a. 28. H. 8. 19. b 4. E. 3. 9 a. 3 H. 6. 35 48. E. 3. 1. 1. Co. 119. 5. Co. 119.

10. E. 3. 374. 5. Co. 103. 14. E. 3. account 72. 28. H 8. 14. 34. E. 3. Execution 129. 10. H. 7. 16. Br. Oblig. 86. Dy. 338. pl 39. Dy. 62. pl. 34. 5. Co. 19 91. 2. Cro. 322.
[The references to f. 19. b. pl. 114 Shep. Touch. 363. 3, Bac. 697.]

*(80) A BOND was made by three; and the words were, "*we bind ourſelves, and each of us by himſelf, for the whole and in full:*" and two of them only, by a joint *præcipe* were ſued in debt, and pleaded ſpecially *non eſt factum*, after oyer and reading of the condition of the bond *in hæc verba:* but the bond itſelf was not read *in hæc verba:* and the iſſue found againſt the defendants. And in arreſt of judgment this Term the caſe above was moved; and the bond being ſeen, it appeared to the Court as above, but in the roll, *non conſtabat* but that the plaintiff brought into Court the writing aforeſaid, which teſtified the ſaid debt in form aforeſaid, according to the courſe of the declaration &c. See *H.* 16. *E.* 3. [*Fitz. Annuity* 47.] a bond by two was, "*we bind ourſelves and each of us,*" without more, it makes the bond joint and ſeveral: and *E.* 10. *E.* 3. [20. a.] four were bound, and the words were, "*we bind ourſelves, and each of us in full,*" as the caſe above is; and this was adjudged joint and ſeveral by each. And *M.* 7. *H.* 4. [6. b. pl. 38.] two were bound by the words "*we bind us, or either of us;*" they ought not to be ſued by ſeveral *præcipes*, but both equally, or one of them by one *præcipe* only. And *E.* 12. *H.* 4. [21. b. pl. 12.] Two [five] were bound ſ. "*we bind ourſelves and each of us for the whole;*" three by a joint *præcipe* cannot be ſued, but either all, or one only, by one *præcipe.* But afterwards judgment was given in the principal caſe above for the plaintiff, becauſe the caſe above did not appear to the Court of the three obligors, as above. (*a*)

(80) *Mich.* 38, 39. *Eliz. B. R.* [Cro. El. 355. 494. Mo 405. *Aſcue*] againſt *Hollingworth*, that if in this caſe the obligation had been entered (*b*) *in hæc verba*, the plaintiff would never have had judgment, by POPHAM, FENNER, and GAWDY.

(*a*) After verdict the Court will ſuppoſe every thing to be right, unleſs the contrary appear on the record. 1. *Wilſ.* 255.

(*b*) If the defendant, having craved Oyer, do not ſet out the whole deed, plaintiff may ſign judgment as for want of a plea, or the Court will quaſh the plea, 4. Term Rep. 370.

Brook *againſt* Ward.

A written will may be revoked by parol.

Dy. 53. 133. b. 143. 3. Cro. 306. Dr. & St. 21.

(81) ONE *Kyete*, of *Kent*, by his will in writing, deviſed his land of *Gavelkind* to one *Harriſon* in fee; and five days before his death he revoked his will in this point, by parol only, in the preſence of three witneſſes, requiring their teſtimony of his preſent revocation; and ſaid to them further, that he would alter this in his written will when he came to town &c. and before his coming thither he was murdered by the ſaid *Harriſon*. And *Harriſon* cauſed the will in writing, as it was at firſt, to be proved; and by colour thereof entered into the deviſe, and then was attainted of murder, and hanged: and his ſon entered by the law of *Gavelkind*, *ſ. The father to the bough, the ſon to the plough.* This matter came out in evidence to a jury of *Kent* this Term, in *ejectione firmæ* between *Brooke* and *Warde*; and this manner of revocation by (*a*) parol as above was affirmed for ſufficient revocation at Bar and Bench, although it was not in writing, nor the firſt will in that point cancelled or defaced; *vide bene.*

Lamb. Cuſt. de Kent 572. b. Stamf Prerog. 49. b. Br. feoffment alſe 1. Wentw, 30. 1. Ro. Ab. 614. 2. Cro. 497.

[Robinſ. Gavelk. Lib. 2. cap. 4.]

(81) This cuſtom is taken ſtrictly: for if the father be outlawed or abjure, the ſon ſhall not have the land. *Stath. Cuſtome*, 232. *E.* 3.

And ſo it was holden, 28. *Eliz.* in a caſe in Chancery between one † *Brocas*, plaintiff, and *Savage*, Knight, and his wife, defendants. [Robinſ. Gavelk. 228.]

(*a*) But now by the 6. ſect. 29. *Car.* 2. c. 3. no deviſe in writing of lands &c. or any clauſe thereof ſhall be revocable, otherwiſe than by ſome other will or codicil in writing, or other writing declaring the ſame, or by burning, cancelling, tearing, or obliterating the ſame, by the teſtator himſelf, or in his preſence, and by his direction and conſent; but ſhall continue &c. unleſs altered by ſome other will, or codicil in writing, or other writings of the deviſor, ſigned in the preſence of three or more credible witneſſes, declaring the ſame. See 3. Mod. 258. 1. P. Wms. 343. And by the 22 ſect. of the ſame ſtat. no will in writing, concerning perſonal eſtates ſhall be repealed; nor any clauſe or bequeſt therein altered by words, or will by word of mouth only, except the ſame be in the life of the teſtator committed to writing, and read to and allowed by him, and proved to be done by three witneſſes.——And of revocations of wills, ſee further Cowp. 52. 87. 812. Dougl. 39. 2. Br. Ch. Caſ. 534. 5. Term. rep. 49. 124. 2. Black. rep 1043. Dougl. 710. 1. Br. Ch. Caſ. 12. 401. 2. Br. Ch. Caſ. 51. 319. 3. Br. Ch. Caſ. 156.

Repingale *againſt* Cooke.

In *Mort-d'anceſtor*, if the iſſue joined on one of the three points, be found againſt the tenant, it ſeems the others ſhould be inquired of.

(82) IN *Mort-d'anceſtor* by *Repingale* againſt *Cooke*, the tenant denied the point of the dying ſeiſed of the anceſtor of the demandant only; and this was found againſt

againſt him, and for the demandant; and the aſſiſe was charged further with the other two points; and one of them, *s.* that the demandant was the next heir, was found for him, and the other point againſt him, *s.* that the anceſtor died before fifty years next before the writ purchaſed. And this Term the demandant prayed judgment to recover ſeiſin &c. and for the diverſity of the books in this point, the Juſtices of aſſiſe before whom &c. would adviſe. * But I underſtand this to be a principle in pleading in a *Mort-d'anceſtor*, that where the tenant of the land, or the tenant by the warranty pleads a bar of the aſſiſe of *Mort-d'anceſtor* as a matter of record, or a releaſe, or collateral warranty, or ſuch matter as is out of the three points of the aſſiſe, there if the matter paſs with the demandant, it is peremptory to the tenant: but where it is pleaded in abatement of the writ, or voucher, and the voucher is counterpleaded by the demandant, and theſe pleas found for the demandant, ſtill all the points of the writ ſhall be inquired of, and ought to be found for the demandant, or otherwiſe he ſhall not recover. And ſee this *M.* † 2. *E.* 3. *M.* 9. *E.* 3. [27. b. pl. 6. & 30. a. pl. 20.] and *M.* 10. *E.* 3. [45. a. pl. 6. ſecond *Nota.*] and 39. *Lib. Aſſis.* [13.] on good conſideration. And here no plea in bar was pleaded, but one of the points only traverſed, the other two by this are not at all denied &c.; but by *H.* 33. *E.* 3. in *Mort d'anceſtor Fitz.* [*Ab.* pl. 34.] and by the opinion of FITZHERBERT, *E.* 27. *H.* 8. fo. 14. [27. *H.* 8. 12. b. pl. 33.] when one of the points is traverſed, the others ſhall be holden not denied, for this is a bar by FITZ.; but this is not true, becauſe he does not ſay *aſſiſa non* &c. which is the form of the bar in aſſiſe. And ſee 8. *Lib. Aſſiſ.* 17. [37.] in *Mort d'anceſtor* of a rent, where the tenant pleads *hors de ſon fee*, and found againſt him, and judgment there given, without enquiring of the points of the writ. But 9. *Lib. Aſſis.* p. 3. where the tenant ſays that the anceſtor did not die ſeiſed, yet the aſſiſe ſhall be charged upon all the points. See *Bracton*, *Lib.* 4. *cap.* 9. *Si petens defecerit in uno articulo cadit aſſiſa mort-d'. ac ſi in omnibus defeciſſet.*

As if he plead in abatement, or vouch, all three muſt. But if he plead in bar, and fail, it is peremptory againſt him.

[15. Vin. Ab. 424.]

Finch. fo. 98. 84. 9. Aſſ. 3. Br. Mort-d'anceſtor 20. 9. E. 3. 27. b. Lib. Intr. 399.

[Booth real action 207. but ſince the ſtat. 12. Car. 2. c. 24. no aſſiſe of Mort-d'anceſtor can be brought of any lands in this kingdom. See 3. Black. Com 187.]

30. Aſſ. 10. 40. E. 3. 48. 10 E. 3. 14. Mort-d'anceſtor 14. 10. Aſſ. 21. 17. E. 3. 28, 29. 1. E. 3. 19.

10. E. 3. 21. Mort-d'. Br. 26. Mort-d' 13. 40. E. 3. 51. 9 E. 3. 49. 9. Aſſ. 14. 33. E. 3. Mort-d' 34. 14. E. 3. Mort-d'. 8. 10 Aſſ. 21. 8. Aſſ. 35. B. Mort-d'. 14.

Andrews *againſt* Blunt.

Rot. 1443.

(83) A MAN ſeiſed of a manor to which the advowſon is appendant in tail, bargains and ſells, and gives and grants, by indenture, for two hundred pounds, and twenty marks, to one, the manor with the advowſon, *ſ.* to have to him, his heirs, and aſſigns, to their own uſe, in ſuch manner and form as afterwards in the indenture is mentioned: and covenants further, to ſuffer a common recovery with the common voucher, to be had againſt him, by two ſtrangers, who ſhall ſtand ſeiſed to the uſe of the ſaid vendee and his heirs, rendering and paying to the vendor and his heirs an annual rent. And for non-payment &c. a ſum of money *nomine pœnæ*, and alſo liberty to diſtrain *toties quoties* &c. and for further ſecurity of the land to the vendee and his heirs, and of the rent to the vendor and his heirs, it is covenanted and concluded, that the vendor ſhall levy a fine to the vendee of the land with proclamations, and that he ſhall regrant and render to the conuſor and his heirs the ſaid rent, with the *nomine pœnæ*, and clauſe of diſtreſs as above; *provided always* that the vendee ſhall grant by his ſufficient deed to the vendor the ſaid advowſon for the term of his life &c. And further it was agreed, covenanted, granted, and condeſcended, that all eſtates and conveyances made, and thereafter to be made, ſhould be to the uſes and intents compriſed in the ſaid indenture, and to no other uſes or intents: and a recovery was ſuffered accordingly, and alſo a fine was levied between a ſtranger, plaintiff, and the vendor and vendee deforciants (and varying from the covenants in certain other points) by which they acknowledged the right &c. *come ceo* &c. to the plaintiff, and he granted and rendered a rent as above to the vendor in tail, the remainder over in fee to a ſtranger; * and the manor and advowſon he granted and rendered to the vendee and to his heirs. So the fine of the rent is contrary to the covenants above. And afterwards the vendee, without making any deed of grant of the advowſon to the vendor, according to the *proviſo* above, died ſeiſed: now, Whether the uſe by this be altered and reveſted in the vendor again, *quære*, in *quare impedit* for the church of *Alaxton*, in the county of *Leiceſter*. The queſtions, *ſ.* Whether

A. bargains and ſells a manor with an advowſon appendant, to *B.* in fee, *habendum* to the uſe of *B.* and his heirs according to an indenture; and it was covenanted to ſuffer a recovery to the uſes of the indenture, rendering rent to *A.* and his heirs, and for further ſecurity, that *A.* and *B.* ſhould levy a fine *ſur grant* to *B* with tender of the rent to *A. proviſo that B ſhould grant by deed the advowſon to A. for life*, with further covenant, that all future eſtates ſhould be to thoſe uſes. The recovery was ſuffered, and a fine levied, which varied from the covenant; but holden,

1. That the *proviſo* here was a good condition.
2. That the fine, notwithſtanding the variance, did not extinguiſh the condition.
3. That unleſs hattened by requeſt, *B.* had his whole life to make this grant in, but by his death without making it, the condition is broken.

[Bend. 201.] Mo. 105. 1. And. 17 [Jenk. c. 6 c. 43.] The record, N E. Qua. Imp. fo. 499. n 15. } S.C.

2. Bro 52. B. N. C. 256. Yelv. 124. Co. Lit 218. b. 208. Fulb. Pail. Lib. prim. fo 13. [3. Com dig. 224.] 15. El. 3. 8. b. Co. 2. 72. a. 69, 70.

[* 311. b.]

5. Mar. 162. a.

Whether the *proviſo* placed in the indenture between two clauſes, or articles of covenants, grants, and agreements, be a condition penal, to defeat the whole bargain and ſale, or be only a covenant, or not? Alſo, Whether it be a condition, where the vendor ought to make requeſt to the vendee to have it performed, and what time he hath to perform it? Alſo, admit that it is a condition, then Whether it is releaſed or extinguiſhed by the fine above, which varied from the covenants above, or not?

Mo. 106.

[5. Vin. Ab. 56. Co. Lit. 203. b. and Mr. Butler's note (1.) there. Shep. Touch. 119.]

(84) And *Mich.* 15. of the now queen the caſe was argued at the Bench; and by all the Judges it was agreed, that the *proviſo* above makes a good and peremptory condition for the entire bargain and purchaſe, in whatever part of the deed it be placed, notwithſtanding the opinion of BROOKE, [tit. *Covenant*, 195.] if the entire ſentence begin with *proviſo*, and be ſpoken by the feoffor, vendor, or leſſor, and the act to be performed or not performed, affirmative or negative, by the feoffee, vendee, or leſſee &c. And for the time that the vendee hath to make the grant, it was holden by three, That he ſhall have all his life to make it in, if no requeſt or notice of the will of the vendor be made in the mean time; for then, immediately he is bound to do it; but at one time or other in his life it ought to be done: ſo by his death the condition is broken: and ſo it would be if it had been a feoffment in fee to reinfeoff the feoffor, who died firſt &c. 18. *Lib. Aſſiſ.* in the laſt caſe &c.

5. Eliz. 222. a. Dy. 318. b. 19. H. 6. 69. Plow. 140. 7. Co. 72. 6. Co. 31. Dy. 354. Plow 138. b. Co. Lit. 208. b. 222. b. 218.

[Shep. Touch. 131. 1. Bac. Ab. 426.]

14. H. 8. 21.

And three Judges held, That the condition is not extinguiſhed by the fine, notwithſtanding the variance of the fine from the covenants in divers points; and this by the laſt general covenant, *that all eſtates* &c. according to the caſe of *Puttenham*, in the Court of Wards. [*ante* 157. a. pl. 28.] But DYER held the contrary; for he ſaid that the condition above was broken, by the not making of the deed of *Grant* in due time. *s.* within ſix months; which is a reaſonable time to do it in, and this without notice or requeſt, *cauſa patet.* And it varies from a feoffment of land where livery of ſeiſin is requiſite. And then the fine above was to the uſe of the vendee only abſolutely; for by the breach of the condition (the advowſon being made in groſs, and conveyed to the vendee by the indenture itſelf by the words of gift and grant without any inrollment, and not by the recovery, for the

2. Co 73. 78, 79. Dy. 46. pl. 6.

[Shep. Touch. 154.]

writ

writ of entry in the *poſt* does not lie of an † advowſon) the advowſon returned and reveſted in the vendor immediately, by the nonperformance of the condition in due and reaſonable time, *i.* within ſix months; for the fine was levied in *Michaelmas* Term after the date of the indenture, which was the 10th day of *February* next preceding, and conſequently the advowſon paſſed by the fine to the conuſee, diſcharged of the condition &c.

And it was holden by all in effect, that an averment by writing or indenture, may be taken to an uſe againſt a fine of grant and render, which in law implies a * conſideration and uſe; as an eſtate tail implies an uſe in the donee, yet by a writing it may be averred to the uſe of the donor &c. And ſo in a gift by a woman to a man in tail, or in fee, rendering a rent by writing, the woman may aver, it to be *cauſâ matrimonii prælocuti*, *Natura Brev. Fitz.* [472.] &c. And afterwards in the end of *Mich.* Term, 15 and 16 of the now Queen, judgment was given *quod querens nihil capiat per breve* &c. (*a*).

See Godb. 130.

14. H. 8. 28. 5. H. 7. 37. b 6. Co. 30. 5. Co. 40. Mo. 496.

* [312. a.]
An uſe by deed may be averred againſt the implied uſe of a fine *ſur grant et render.* [See 7. Br. Parl. C 70. 3. Term Rep. 475. 5. Term Rep. 129] 2. Co. 75, 76. Dy. 127. 172. b. 5. Co. 26. 28. H. 8. 8. b. Plow. 555. a. 27. H. 8. 9. 2. Co. 78. a. 24. H. 8. B. 60. Dy. 155. 4. Mar. 146. b. 1. Co. a. 74. [Cro. Jac. 29. Gilbert Uſes 57, 58, 29. Car. 2. c. 3. § 7. & 4 Ann. c. 16. § 15. Comber. 429. See Doug. 25.]

† *Eaſt.* 35. *Eliz. B. R.* It was taken that a common recovery may be of an advowſon appendant to a manor.

(*a*) There was another point ruled in this caſe, as appears from Lord *Coke*; which point is noticed in Jenk. c. 6. c. 43. but not in any of the other books where this caſe is alſo reported; and is as follows: "If a man grant an "advowſon, upon condition that the grantee "ſhall regrant the ſame to the grantor in tail; "in this caſe if the church become void before "the regrant, or before any requeſt made by "the grantor, he may take advantage of the "condition, becauſe the advowſon is not in "the ſame plight as it was in at the time of "the grant upon condition. And ſo it was "reſolved, *Paſch.* 14. *Eliz. in communi banco*, "between *Andrews* and *Blunt*, which I heard "and obſerved, and which my Lord DYER "hath omitted out of his report of that caſe; "and therefore the grantee in that caſe at his "peril muſt regrant it before the church be- "come void, or elſe he is diſabled; otherwiſe "he hath time during his life, if he be not "haſtened by requeſt." 1. Inſt. 222. b. 2. Co. 79. a.

Trinity Term,

14. Queen Elizabeth.

Entry in the *quibus* againſt *A.* and *B.* Verdict that *A.* diſſeiſed, but *B.* not. Judgment ſhall be againſt *A.* for the whole.

(85) A WRIT of *Entry in the quibus* in the nature of aſſiſe, was brought againſt the mother, and the ſon within age. The mother by attorney, and the ſon by guardian, pleaded, that they did not diſſeiſe &c. And it was found that the mother diſſeiſed the demandant, but the ſon did not diſſeiſe. And, Whether judgment ſhall be given of the whole againſt the mother, and the demandant in mercy for his falſe claim againſt the ſon, or only of the moiety, *quære*. And it ſeems by the opinion of the Court, that it ſhall be given of the whole: and it was ſo done.

21, E. 1. Raſt. diſtreſſe 10. Dy. 158. 194. 325. 7. H. 7. 2. 8. H. 6. 13.

Dawſon *againſt* Alford.

Count for diſtraining beaſts of the plough *contra formam ſtatuti*, is good without averring that he had other goods ſufficient for the diſtreſs.

(86) ACTION of treſpaſs was brought upon the ſtatute [53. *H.* 3. ſt. 4.] that no man be diſtrained by his beaſts of the plough &c. ſo long as another reaſonable diſtreſs may be made upon him by &c. And the plaintiff did not ſhew in the count, that any other reaſonable diſtreſs could be made, but generally according to the form of the writ, *s. againſt the form of the ſtatute aforeſaid.* And the defendant pleaded, not guilty; and it was found againſt him: and in arreſt of judgment, he ſhewed this default above, *ſed non allocatur*; but this ſhall come from the defendant when he juſtifies for rent-ſervice, *s.* that no other reaſonable diſtreſs could be found,

Artic. ſuper Chartas. 4. H. 7. 8. b. 13. H. 7. Cro. 33. Dy. 363 pl. 25. 2. Keble 125. 289. [2 Bac. Ab. 109. and ſee 1. Bur. 580. 4. Term Rep. 565.]

(86) *E.* 41. *Eliz. B. R. Langley* v. *Hill.* [Cro. Eliz. 749.] In debt on ſtatute 1. *R.* 3. 3. the plaintiff counted, that he was in priſon for felony, and before the acquitter, the defendant took his horſe, *againſt the form of the ſtatute*, and adjudged good without ſaying *for the ſame cauſe.*

E. 10. *E.* 1. rot. 2. *C. B.* adjudged that altho' the ſheriff for the King's debts, ſhall diſtrain *per averia carucæ*, not ſo for others.

E 15. *Eliz.* rot. 56. *C. B.* † *Robert de Middleton* recovers four ſhillings for damage, becauſe diſtrained *per averia carucæ* for a debt to the Queen, and there was other ſufficient diſtreſs, therefore the diſtrainor *in miſericordia.*

M. 15 *E.* 1. rot. 62. *C. B.* † *Galfrin Pitchford*, impleaded *John Maundant*, becauſe againſt the ſtatute he diſtrained *averia carucæ*, where there were others within the fee; and it is ſaid, becauſe the plaintiff was a villein, therefore the diſtreſs condemned.

which

which is iſſuable by *Hil.* 4. *E.* 3. f. 1. And *M.* 18. *E.* 2. [*Fitz. Abr. Action ſur eſtatute*, pl. 35.] where it is holden, that this action lies for the tenant againſt the Lord, although the tenant has made ſatisfaction to the Lord for the rent for which the ſaid diſtreſs of his beaſts of the plough was taken. And ſee for this action, *E.* 17. *H.* 6. rot. 93. [*C. B.* 2. *Inſt.* 133.] Note, the plea above was, that *the defendant did not take or impound &c. againſt the form of the ſtatute aforeſaid.* And afterwards in this Term the plaintiff had judgment, with damages &c. See a ſimilar challenge to a count as above, *M.* 11. *H.* 4. [14. a.] in an appeal of rape upon the ſtatute of 6. *R.* 2. [c. 6.] by the huſband of the woman raviſhed, without ſuppoſing that ſhe conſented to the raviſher, but only *againſt the form of the ſtatute*, which words imply as much.

Dy. 14. 166. 201. 304. 307. 346. 3. El. 202. a. Dy. 360. 8. Co. 82. a. [2. Hawk. P. C. 253. 255.]

Lord Sands *againſt* Bray.

* [312. b.]

(87) CESTUY *que uſe* in tail, the remainder over in tail, after the ſtatute of 27. *H.* 8. [c. 10.] levied a fine with proclamations, and had iſſue and died within three years after the fine levied: and the iſſue afterwards died without iſſue, before any entry made by the feoffees: and afterwards, within five years, a friend to him in remainder, without any warrant requeſt, or commandment, of the feoffees, or of any of them, * entered in the name of the ſurvivor, or heir of the ſurvivor of the feoffees, with intent to revive the uſe of him in remainder, without naming the ſurvivor in certain, who he was. Whether this be good or not, was in a ſpecial verdict.

Ceſtuy que uſe in tail, remainder over, after 27. *Hen.* 8. levies a fine, and dies without iſſue; within the five years a ſtranger enters in the name of the feoffees, or of the ſurvivor of them, without naming any one,—*qu.* if lawful. [Bend. 305. S. C.] [13. Vin. Ab. 287.] 9. Co. 106. 104. Dy. 291. 1. R. 3. pl. 13. 1. Co. 137. 11. Aſſ. 11. 10. H. 12. a. 3. H. 8 B. 153. [Cruiſe on Fines 307. 308. 2. Com. dig. 423.]

(87) The verdict was uncertain and void, becauſe the entry was uncertain; but no judgment was given accordingly to *Bendlo*, [307.]

(88) THE Chaplain of a Lord, being ſufficiently qualified with the teſtimonial of his maſter, ſigned and ſealed that he is his Chaplain; and alſo having a ſpecial diſpenſation for a plurality, and being once advanced

A clerk once qualified as chaplain to a peer, though the peer die, or he quit his ſervice, may retain his pluralities; and though he have

(88) *Trin.* 11. *Jac. C. B.* Sir *H. Wallop* v. the Biſhop of *Exeter*, in *quare impedit* [1. Brownl 162. 2. Brownl. 45.] adjudged, that the King's Chaplain may accept a benefice of the gift of the King above the value of eight pounds, without letters of diſpenſation; but not of the preſentation of a common perſon; and ſo the proviſo of the ſtatute of 31. [21.] *H.* 8. is ſatisfied. *M. b.*

not purchaſed a diſpenſation, it is no forfeiture. See for all this caſe, [Wood's Inſt. 39. Watſ. Cler. Law. 14—19

vanced to the plurality, ought to enjoy it during his life, notwithſtanding the death of his maſter, or departure from his maſter's ſervice; by the opinion of CATLYN, SAUNDERS, and DYER.

If a lord having right to three chaplains only, appoint ſix, the three firſt appointed are legally ſo. Mich. 42. & 43. El. rot. 213. B. R. Drury's caſe fol. 8 & 9. pl. 50. [Cro. El. 723. 839. 4. Co. 89. b. Mo. 561. Jenk. c. 6. e. 91.] In Hickford's caſe 36 Eliz. in the Exchequer, [Savil. 135.] it was ſaid, that it was ſo adjudged Eaſt. 31. El. C. B. between the Queen and Magdalene College, [vide infra] Raſt Reſidence 2. Mo. 440.

But if they were ſeverally retained, then the firſt retained ſhall have the privilege of the ſtatute, and not the others, although they were firſt promoted, as was adjudged 42, 43. Eliz. B. R. rot. 2 3. 4. Co. 90. a. 117. b. The Queen againſt Magdalene College, in Oxon, Eaſt 31. El. rot. 728. Skifflin, clerk [Savil. 101. and cited in Drury's The Queen againſt † Lord caſe *ſupra.*] Saxant on Trin. 33. Eliz rot. 845. † Fulce's caſe. The Queen v. Drury, M. 41 & 42. Eliz. rot. 301. [*vide ſupra.*] that thoſe two chaplains, which were firſt retained are warranted, and not the others by all theſe caſes.

Alſo the Chaplain of a Lord having two benefices with cure without a ſpecial licenſe or diſpenſation of the metropolitan, ſeems not to be in danger of loſing his plurality by force of the act 21. *H.* 8. [c. 13.] becauſe the words are, not that he *muſt* ſue for a licenſe &c. but he *may* ſue for ſuch licenſe &c. But he is in danger by that in the ſpiritual law. *Quære* well thereof.

Alſo a Lord being allowed only three Chaplains, admitted ſix by his letters teſtimonial to be his Chaplains at one time; and all ſix are preferred to ſix ſeveral pluralities; the three who are firſt promoted are warranted by the ſtatute to enjoy them without danger, by the opinion of the ſaid CHIEF JUSTICES and CHIEF BARON. And the three laſt are not by the ſtatute reputed his Chaplains, ſo long as the three firſt being promoted by his ſervice continue alive; for otherwiſe the ſtatute might be defrauded.

Mich. 41, 42. *Eliz* entered *Eaſt.* 41. *Eliz C. B.* in *quare imp.* for the Queen againſt the Biſhop of *London* and *Page* incumbent, [Cro. Eliz. 719.] and the declaration was for the taking of two benefices with cure againſt the ſtatute 21. *H.* 8.—the Biſhop pleaded the general plea; *Page* ſaid, that he was chaplain to Lord *Morley*, and thereby capable of two benefices with a diſpenſation according to the ſtatute, and that the Archbiſhop, upon ſuggeſtion that the benefices were ſmall and poor, had given him a diſpenſation, and that the Queen had confirmed it; and upon the ſhewing of the diſpenſation, and the letters patent of confirmation, it appeared that there were not any words of diſpenſation in them, but only words of union. And by KINGSMILL, GLANVILL, and WALMSLEY, adjudged that it was a good diſpenſation, and it is not requiſite to have that preciſe word (*diſpenſation*); but it ſufficeth if that be in effect, and the circumſtances prove it to be a diſpenſation: to which ANDERSON agreed, and ſo adjudged after argument by the Civilians.

Leaſe for twenty years to *A*, *B*, and *C*.—*A*. and *B*. take a new leaſe to commence from the expiration of the firſt, or on the prior death of *C*.—*C*. dies within the term; Whether the new leaſe muſt commence now, or *A*. and *B*. may elect to wait the efflux of the twenty years. This caſe of Mich. 35 & 36. Eliz. cited 337. Coke 6. 36. b. Dy. 23.

(89) A LEASE is made to three, for the term of twenty years, and afterwards two of them take a new leaſe for the term of thirty years, to commence immediately from and after the end of the ſaid twenty years, or immediately from and after the death of the third jointenant, if he ſhould happen to die within the ſaid twenty years; who died within three years after the new leaſe. Whether the ſaid new leaſe ought to commence immediately after the death, or at the end of the ſaid twenty

twenty years, at the election of the ſecond new leſſees, *quære* well, becauſe the Juſtices doubted.

262. pl. 29. But Mich 32, 33. Eliz. it was agreed *per Curiam* in C. B. that it commences at whichever of them happens firſt. 2. Mar. 108. b. 2. Co. 37. [3. Bac. Ab. 426, 427. poſt 376. b. pl. 27. in margine.]

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(90) IN avowry for a rent-charge, it was alleged, That the grantor of the rent (by name) was ſeiſed of the land whereof &c. *in his demeſne as of fee*, and being ſo ſeiſed, granted the rent &c. And the plaintiff, in bar ſaid, that the ſaid grantor was his father, and that he was ſeiſed in the land at the time of the grant *of an eſtate tail*; and ſhewed by whoſe gift &c. And Whether this manner of pleading be ſufficient, without a traverſe of the ſeiſin in fee, was much debated between LOVELACE and MANWOOD at the bar; but the Juſtices thought the more ſure and plain way is to take a traverſe.

Avowry for a rent-charge, ſtating the grantor *ſeiſed in fee*. Plea that it was *an eſtate tail*, ſhould traverſe the ſeiſin in fee. [Ante 280. b. pl. 16. S. C.] Dy. 95. pl. 40. Hob. 103. R. 147. 5. H. 7. 12. a. 47. E. 3. 25. b. 5. H. 7. 15. a. 11. Aſſ. 24. 6. Co. 24. 3 H. 6. 52. a. Dy. 365. pl. 33. Mo. 870. [5. Com. dig. 110. Cov. Jac. 44.]

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* Stroud's Caſe. * [313. a.]

(91) *MEMORANDUM*, That it was reſolved by the opinion of the Court in the Bench, That the ſeigniory and tenure of obit land, or chantry land, is extinct by the poſſeſſion of the King, by the act of 1. *E.* 6. [c. 14.] notwithſtanding the ſaving in the act; *propter abſurditatem* &c. But for the rent, parcel of the tenure, the lord may diſtrain the King's patentee, and make avowry upon the matter, but not upon the perſon within his fee and ſeigniory. And the ſame opinion was holden again, *M.* 16. of the preſent Queen. [*Stroud*'s caſe, *Devon. Benl.* 237. 4. *Leon.* 40. 3. *Leon.* 58. 1. *And.* 45.]

Seigniory and tenure of obit and chantry land, is extinct by poſſeſſion of the King; but his patentee may be diſtrained for the rent. [20. Vin. 242.] A ſaving in an act of parliament which is repugnant to the body of it, is void [Plowd. 565.] 1. Co. 47 a 8. 118. a. 3. Car. Cro 93. 21. H. 7. 1. a. 47 E. 3. 21 b. 1 H. 4. 5. a. Haſt. Monaſt. 13. Co. Lit. 1. b. Davis 2 Dy. 368. pl. 47. 10. H. 6. 15, a. 4. Jon. 349. poſt. 327. a.

Mar. 139. a. 21. H. 7. 2. a. Jo. 234. Rell. contin. 246. Lit. Rep. 44. [W

(91) An abbot before the diſſolution, held of another by fealty and rent, and afterwards the land came into the King's hands by ſtatute, the ſeigniory is only ſuſpended; and if the King grant the land to another, the patentee ſhall hold of the Lord as before, by Dyer. But all the Juſtices agreed that the † *Lord* ſhall have his rent; but ſome doubted whether it ſhall be rent-ſervice as before. *Trin.* 13. *Eliz. C. B.*

† Orig. *ſe.*

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(92) "THE writ of the Queen to theſe preſents annexed, with that reverence and honour "which is due, we lately have humbly received to exe- "cute

In dower on the iſſue of *ne unques accouple*, the Biſhop muſt certify directly a legal marriage, or otherwiſe; but to re-

turn particulars, though concluding "*iſſint lawfully married*," is bad. [See ante.] M. 13 & 14. El. 305. p. 60. Qw. 25. 2. Ro. Ab. 591.

"cute; for the executing of which we have applied all "the diligence and induſtry in our power, and have "cauſed diligent inquiry to be made according to the "tenor, form, and effect of that writ; by which we have "diſcovered clearly and found from the evidence of thoſe "examined in that inquiſition by force of the writ aforeſaid, "as well as by certain other proofs had and taken before us "in the ſaid buſineſs, that *Thomas Gray* in the ſaid writ alſo "named, of the age of eleven years, ten months, and "twenty days, and *Elizabeth* in the ſaid writ alſo "named, of the age of ſixteen years, being reſpectively "free and exempt from all matrimonial contract, or eſpou-"ſals, contracted matrimony *per verba de preſenti*, and in "the face of the church at *Bacontborpe*, in the county of "*Norfolk*, on the 18th day of *March*, in the eighth year of "our Lady the now Queen, lawfully ſolemnized it between "them; *and ſo were coupled in holy matrimony.* In teſti-"mony whereof we have cauſed our ſeal to be put to theſe "preſents. Given" &c. And for the maintaining of this return, the book of 12. *R.* 2. in Dower, [*Fitz. Ab.* pl. 54.] was vouched; where it was pleaded in bar, by proteſting that he did not acknowledge the eſpouſals between the demandant and the deceaſed, for plea he ſaid, that the wife, at the time of the death of him who was ſuppoſed her huſband, was only of the age of eleven years; nor he who was ſuppoſed her huſband, but of the age of ten years and a half, judgment if at ſuch age ſhe ought to have dower. And the demandant demurred upon the plea, and in the ſame Term judgment for the demandant that ſhe ſhould recover ſeiſin, and a writ to enquire of the damages given by THIRNING; for CHARLETON ſaid that the eſpouſals continued always, until defeated &c. And in the thirteenth year of *Ed.* 1. in *Itin. North. tit. Dower* in *Fitzh.* [pl. 172.] A wife ſhall loſe dower if her Lord, *s.* her huſband, die before nine years of age. See before of this matter, fol. 305. See a like manner of certifying by the Biſhop upon a writ of general baſtardy in aſſiſe, † 39. *Lib. Aſſiſar.* [39. *E.* 3. 14. a.] with an *iſſint ſurely baſtard*, notwithſtanding by the law of the land ſhe was *mulier*, * although ſhe was born in adultery at the time of the elopement of the wife from the huſband, as the caſe was recited by the Biſhop;

Dr. and St. 14.

1. Inſt. 33.

F. Nat. 149. a. 35. H. 6. 41. b. Lit. 3. b. Seld. Annot. in Hengh. fo. 155. 39. Aſſ. 14. 43. Aſſ. 11. 43.

* [313. b.]

1. E. 3. 22. 2. R. 3. 3. a. 43. Aſſ. 11. 14. Aſſ. 2.

Biſhop; yet mark well, that in 38. *Lib. Aſſ.* [pl. 14.] the caſe appeared, that the Biſhop to the writ of baſtardy made two returns, *s.* one by his letters patent ſealed, in which he returned preciſely and fully baſtard; and the other was upon the back of the writ, in which he returned the circumſtances and cauſe, and *iſſint baſtard*; to which the Court did not pay any regard; for the writ commanded the Biſhop to certify, by his letters patent and cloſe &c. And then that which was returned upon the back of the writ was ſurpluſage or nugatory, and not effectual.

And *memorand'*, That in the time of the parliament of the eighteenth year of the preſent Queen, a queſtion upon the certificate aforeſaid was moved to the Doctors underwritten, of each law, *s. Lewes*, *Yale*, *Barkeley*, *Jones*, *Martin*, *Awbrye*, *Huſſey*, *Lloyde*, *Carewe*, *Maſter*, *Sywarde*, *Lougher*, *Creake*, and *Stanley*, who all ſubſcribed with their hands, ſaying, "We be of opinion that this certificate is "repugnant in itſelf, and inſufficient." And Sir *Richard Rede*, Knight, Maſter in Chancery, aſſented. And at length by the Queen's mandate for expedition, it was reſolved (the arguments of *Rodes* and *Anderſon* for and againſt the bar, in *Mich.* Term, in the twenty-firſt year of the preſent Queen, in my chambers, on *All Souls* day), That the certificate aforeſaid is inſufficient and doubtful, nor doth give a full anſwer to the writ, *s.* Whether they were joined in lawful matrimony, or not? But if it had been a ſpecial verdict found with an *iſſint* by a jury upon a ſpecial plea, ſome thought that it ſhould ſerve for dower. But *quære* how this can be, if the defendant pleaded *ne unques accouple* as above; becauſe ſuch an iſſue is triable by the Biſhop, and not by the country &c. But WYNDHAM in the caſe above, held the certificate aforeſaid ſufficient for dower; but MEADE, MOUNSON, and DYER, *e contra*. But ſee the return upon the new writ to certify, directed to the ſucceſſor of the aforeſaid Biſhop, made contrary to this. *Eaſt.* in the twenty-ſecond year of the preſent Queen, fol. [368. b. pl. 48. *poſtea.*]

Dy. 305. 49. 3. 18. [See Com. dig. Pleader (2. Y. 10.)

Gray's

Gray's Caſe.

A baſtard is not *lawful generation*, within the purview of 32. H. 8. c. 1.

3. Leon. 49. 6. Co. 77. a. 10 83. a Raſt. Willes a. Dy. 323. 345. Noy 35. 38. E. 3. 11 2. E. 6 b. 394. 3. Cro. 510. Ley's Rep. 12. 1. Inſt. 78. a. 123. b.

[Vide ante 296. pl. 23.]

(93) *EDWARD GRAY*, baſtard ſon of the late Lord *Powes*, begotten on the body of *Jane Orwel* unmarried, had divers lands of tenure *in capite* conveyed to him in the fifth year of *E.* 6. in remainder after the death of the ſaid Lord *P.* without iſſue in tail general, by the name of *Ed. Gray*, ſon of the ſaid Lord *P.* begotten on the body of *Jane Orwel* &c. And he was called in the Court of Wards and Liveries, for his livery of the third part of the premiſes, with all the arrears ſince the death of the ſaid Lord *P.* without iſſue. *Quære.* And it ſeemed to SAUNDERS and DYER, that he ſhall not ſue livery, becauſe he is as a ſtranger, and not a lawful iſſue, which is mentioned in the preamble of the ſtatute of 32. *H.* 8. [c. 1.] The like 18. of the preſent Queen, fol. [374. b. pl. 17. *poſtea.*]

* [314. a.]

Whether a leſſee under covenant to repair at his own coſts, may cut timber to repair decays by tempeſt—*qu.*

[Mo. 23. Dy. 198. b. 53.]

Jenk. cent. 4. c. 64. ante 33. a.

*(94) THE leſſee of a farm covenanted in the indenture of leaſe to repair the houſes at his coſts and charges when there ſhould be occaſion. And afterwards he took great trees growing upon the farm, to repair the houſes decayed by age or tempeſts, and employed them upon the repairs; for which an action of waſte was brought againſt them. And he pleaded the matter above in bar; and the plaintiff replied by the covenant above, *quære* well. See 43. *E.* 3. fol. 6. and 21. *H.* 6. fol. 50. [46.] and 12. *H.* 8. fol. 1.

Cleer *againſt* Brook.

Mich. 14 & 15. El. rot. 2015.

A purchaſer of land in fee dies without iſſue, his mother has a brother, and likewiſe his grandmother on his father's ſide; the latter ſhall be his heir, and not his maternal uncle.

Plow. 444. b. [S. C. which ſee, and 2. Bl. Com. 236, 237.]

Plow. 446. 448 296. a.

(95) IT was moved for a queſtion by BENDLOWE, that if there be a grandmother on the part of the father, a mother, and ſon; and the grandmother have a brother, and the mother have a brother likewiſe; [and] the ſon purchaſe land in fee, and die without iſſue, Whether the brother of the grandmother, or the brother of the mother ſhall be heir to him *quære.* But the opinion of all the Juſtices of the Bench was, That the brother of the grandmother ſhall inherit to the ſon as he who

who is neareſt of blood to him on the part of the father &c. 12. *E.* 4. [14. a.] accordant thereto, although he bear not the ſirname of the ſon or father, for he is of the moſt ancient blood, mixed in his name; and alſo of the moſt worthy blood by the male ſex of the father, than is the uncle, *s.* the brother of the mother of the ſon. The opinion of FINCH in 39. *E.* 3. [29. b. 30. a.] *obiter* in the aſſiſe of *Oſborne* agrees. And *Brooke* in his new abridgment, title *Diſcent* [pl. 38.] declares 12. *E.* 4. to be ſo intended. And *Britton* in title [*de Succeſſion*, c. 119.] But JEFFREYS *contra, totis viribus.* And this by the Book of Moſes *Numbers*, c. 17. [27.] *Glanvil* [*Lib.* 7. c. 1.] *Bracton* [*Lib.* 1. c. 29, 30, and 31.] *Inſtitute of Civil Law*; *Britton*, *Forteſcue de Laudibus Legum Angliæ*, *Littleton*, and 12. *E.* 4. [*quâ ſup.*] But judgment was given in *Eaſter* Term or *Trinity*, 15 of the preſent Queen, againſt the opinion of JEFFREYS, *s.* That the uncle on the part of the mother ſhall not be heir, but the great uncle, *s.* the grandmother's brother ſhall, becauſe in him is the more ancient, worthy, and alſo the moſt entire blood.

Lit. ſs. 1. Plow. 450.

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(96) LANDS are aſſured in fee by fine, "to *A. B.* "to the uſe of *C. D.* and his wife for the term "of their lives, and of the longer liver of them, re- "mainder after their deceaſe for ſix months to the uſe "of the executors of the ſaid *C.*, and after ſix months "ended, then to the uſe of *E.* and *F.* his wife, and to "the heirs of their two bodies lawfully begotten; and "for default of ſuch iſſue to the ſaid *C.* and his heirs for "ever; provided always, That if it ſhall happen to the "ſaid *C.* at any time after to have iſſue of his body, or "any wife of the ſaid *C.* at the time of his deceaſe to "be enceinte with any iſſue begotten by the ſaid *C.* that "then after ſuch iſſue had, and after five hundred marks "paid to *G.* or tendered and refuſed within the ſpace "of ſix months next after the birth of the * iſſue of the "ſaid *C.* then the uſe of the ſaid lands, immediately "after the deceaſe of the ſaid *C.* and *D.* and after the "ſaid ſix months ended and expired, ſhall be to the "ſaid *C.* and to the heirs of his body, and for default "of

Conveyance to the uſe of *A.* and *B.* his wife for life, remainder to *C.* in tail, remainder to *A.* in fee, provided if *A.* have iſſue of his body, or any wife of *A.* at his deceaſe be enceinte by him, then after ſuch iſſue had to *A.* in tail, and in default to him in fee *B.* dies, *A.* marries again: yet before the performance of the contingency, *A.* has no larger eſtate than he had before

Dy. 309. pl. 76.

* [314. b.]

" of ſuch iſſue to the right heirs of the ſaid *C.*"—*D.* the wife of the ſaid *C.* died, and *C.* took another wife; *quære*, What intereſt *C.* hath in the lands before iſſue had by the ſecond wife, and before the ſix months paſſed? And it ſeemed to PLOWDEN and DYER, that before the performance of the contingency, he hath no larger eſtate than he had before.

1. Co. 129, 130. [Bac. Ab. Uſes (K) Fearne cont. rem. 197.]

A. conveys to *B.* in truſt to perform *his will*, and afterwards declares the uſes by indenture. But the word *will* muſt mean his *laſt will*; and he may alter the uſes as he pleaſes.

Dy 266. Lit. Rep. 25. [Ante 96. a ſub fin. pl. 40.] 6. Co. 18. a. Dy. 49. 30. H. 8. b. B. feoffments al Uſes 47. 31. H. 6. Subpœna 23.

(97) A MAN by his deed indented and ſealed, and dated in the thirteenth year of *H.* 8. declared, That whereas he had ſuffered a common recovery againſt himſelf, by divers of his friends, upon truſt and confidence, of certain lands, to the intent of performing *his will* touching the diſpoſition of the ſaid lands: firſt he willed, that his ſaid feoffees and their heirs, ſhould ſuffer him to have and receive annually the iſſue and profits thereof coming and iſſuing during his life, and after his deceaſe to ſtand ſeiſed of the third part thereof, to the uſe of his wife during her life, and after her deceaſe to ſtand ſeiſed of the premiſes, and the reverſion thereof after his deceaſe, to the uſe of *R.* his ſon, and the heirs of his body, with other remainders over &c. Whether he may alter and change during his life the uſes limited in the indenture, or not? And it ſeems to me, that he may well alter this will; for *will* and *laſt will* are underſtood to be all one; and this recovery was to the intent to perform the will, and this indenture is as a will, which is alterable; therefore it is not a limitation of uſes upon livery made, according to the nineteenth year of *H.* 8. [11. a. pl. 5.] And other Juſtices agreed to this opinion.

[Gilb on Uſes 36. 3. Term Rep. 124.] 5. E. 4. 8. a. 30. H 7. 11. a. 33 H. 8. 49 b. 15. El. 325. a. B.N. 156. Cro. 120. pl. 69. Perk. 92.

Poſt. 323. a.

Lord Crumwell's Caſe.

A Lord of Parliament ſhall not be impanelled without a ſpecial neceſſity, or command of the King.

(98) IN the *Regiſter* title *Brevia de Statutis*, fol. 179. [and, *F. N. B.* 386.] That Barons ſhall not be put in aſſiſes, &c. " The King to the Sheriff greeting, Becauſe " the

(98) *Noy*, Attorney General, in the reading of Mr. *Atkins*, 1632, held, That a Baron or Earl ought to appear at the Seſſions of the Foreſt, and that no immunity by common or ſtatute law privileges him; and the reaſon is, becauſe it is a royal ſuit, of which no ſubject ſhall be diſcharged.

" the Barons of our realm have not been accuſtomed to be " put in any aſſizes, juries, or recognizances, as they ſay, " unleſs their oath be ſo neceſſary, that without them the " truth cannot be inquired, we command you that you do " not put, or cauſe to be put, our beloved and faithful *A.* in " aſſiſes, juries, or recognizances, againſt his will, without " our ſpecial command, unleſs his preſence be for ſome " cauſe ſpecially required. Witneſs" &c. And ſee in a note, 48. *E.* 3. upon a writ brought to the Juſtices, teſtifying, that he was a Baron, he was * diſcharged from the inqueſt, fol. 29. [30 b. pl. 18.] And at length, upon the earneſt ſuit and requeſt of Lord *Crumwell*, he was diſcharged from this attachment by order and rule in the parliament Chamber, which ſhould be entered on the rolls of parliament; and that ſuch proceſs is not awardable by the common law, ſtatute law, cuſtom, or precedent, againſt any Lord of Parliament, with a ſaving of the Queen's prerogative, and any other good and ſufficient matter which may be ſhewn to the contrary in this parliament, or any other hereafter.

Fulb. 165. Dr. St 15. 35. H 6 46. Sty. 253.

48. Aſſ. 6. 6. Co. 53. Mo. 767. 35. H. 6. 46. a. 27. H. 8. 22. 6. Co. 54.

* [315. a.]

[Tothil Rep 14.]

26. H. 8. 7. 11. H. 1. 15. 14. H. 6. 2 43. E. 3 33. a. 44. E. 3. 25. 7. H. 4. 2. a. 7. H. 6. 10. 27. 10 H 7. 1. 1. H. 5. 14 a.

And note, *E.* 29. *E.* 3. fol. 30. a Biſhop condemned in treſpaſs, aſſigned error in the omiſſion of this clauſe, *ſi. Quod defendens capiatur pro fine*; and it was not allowed for error, as appears in the caſe next following this.

29. Aſſ. 33. poſt. pl. 99. 3, Cro 170.

charged. And the ſtatute of *Marlebr.* c 10, mentions only ſheriff's torn, and by that the foreſt ſhall not be intended In the pleas of parliament, 18. *E.* 1. between the Earl of *Glouceſter* and the Earl of *Hereford: John de Haſting*, a Baron, upon long debate, whether he ought to be ſworn, becauſe a peer of the realm; it was reſolved, that he ought to put his hand to the book. The like was † 10. *Car.* in *B. R.* by the Court to Lord *Dorſet*, where his teſtimony was required. [See Com. dig. Serement (*C.*) Frem. 412. 1. P Wms. 146.]

Lady Wake *againſt* the Biſhop of Ely.

(99) ERROR in *B. R.* in the record and proceſs before four, three, or two Juſtices of Oyer and Terminer, who aſſigned in three things; *ſ.* the writ of treſpaſs ſuppoſed the treſpaſs to be done at *Cole*, *juxta Somerſham*, which *Cole* is a place in *Somerſham*, called in *Engliſh*, *Cole*, *beſides Somerſham*; and for that the writ was challenged; *et non allocatur*, but the writ holden good enough. The ſecond error was aſſigned upon the iſſue of not guilty, no expreſs mention made in the

A *capias* does not lie againſt a Biſhop.

Treſpaſs ſuppoſed in *C. juxta S.* where it is *C. beſides S.* is not error.

Nor the omiſſion in the *venire facias* of the names of the Juſtices of Oyer and Terminer before whom the writ is returnable.

29. Aſſ. 33. 29. E. 3. 31. } S. C. Dy. 142.

Jenk. cent. 4. c. 17. 44. Aſſ. 9. 44. E. 3. 10. [Bac. Ab. Juries (I.)]

venire facias, before what Juſtices the writ was returnable. The third, The defendant, who was a Biſhop, was convicted of the treſpaſs, and yet no judgment given that he ſhould be taken, *s. quod defendens capiatur*. And notwithſtanding any of the aforeſaid errors aſſigned, the judgment was affirmed. *Nota bene*, and *quære*, if error be in the omiſſion of a *miſericordia* where there ſhould be an amercement; or a *miſericordia* is, where it ſhould not be, Whether for this error which concerns the King only, the entire judgment and record ſhall be (*a*) reverſed, or not. *Anno* 29. *Lib. Aſſ.* fol. 166. [164. pl. 33.] in the book printed by *R. T.*

Supra pl. 98. 6. Aſſ. 5. Mo. 768. 1 Rol. Ab. 220. 769. 3. Mar 133. a. 8. Co. 59. 6. E. 6. 22.

(*a*) Now by 16. and 17. *Car.* 2. c. 12. no judgment ſhall be reverſed for want of a *miſericordia* or *capiatur*, or becauſe one is entered inſtead of the other. And by 5 and 6 *W* and *M.* c. 12. the *capias pro fine*, is taken away.

A defeaſance dated before, but delivered after a recognizance, is a good bar. Judgment on a *ſcire facias* in Chancery reverſed in *B. R.* on error. [Vide ante 307. a.]

Perk. 31. 147. 19. Aſſ. 47. 18. E. 3. 25. 17. Aſſ. 24. Error 71. 22. Aſſ. 22. 37. H. 6. 14. b. 11. E. 4. 9. a. Plow. 393. a. Co. Jur. Cour. 80. 1. Ro. Ab. 744. [1. Eq. Caſ. Ab. 129. 1. Vern. 131. 3. Bl. Com. 49.]

(100) A *SCIRE FACIAS* brought in the Chancery to have execution of a recognizance made there. And the defendant pleaded a defeaſance made and delivered to him by the plaintiff ſince the recognizance, &c. but the deed bore date a month before the recognizance &c. And for this cauſe the defendant was not received as to the plea, but execution awarded to the plaintiff, for which the defendant brought a writ of error in *B. R.* where the judgment was reverſed. And ſo note a judgment given in the Chancery, which is before the King himſelf reverſed in *B. R.* which is alſo before the King himſelf, and not in parliament.

The writ or count in *formedon in reverter*, or *remainder*, or *ſcire facias* upon fines, need not allege ſeiſin within fifty years [See 10. El. 278. a. pl. 2.] Dy. 78. 173. 291. 330. 8. Co 65. 9. Co 36. B. N. C. 444. 3. Car. Cro. 83. [Sed vide Booth real act. 145.]

*(101) NOTE, By the opinion of the Court in the Bench, that in a writ of *formedon in reverter* or *remainder*, or *ſcire facias* upon a fine of a like nature, it is not neceſſary for the demandant to allege in the writ or count any limitation by the ſtatute 32. *H.* 8. [c. 2. § 5.] ſ. within fifty years after title &c.; ſince before that time no limitation was mentioned in ſuch writs, nor in formedon *in deſcender*; but this comes on the part of the tenant to be traverſed, as in avowry, ſ. not ſeiſed of the ſervices ſince the limitation.

Michaelmas Term, [315. b.]

14 & 15 Queen Elizabeth.

Henry Vernon, Demandant, *againſt* Sir Th. Stanley, Margaretta his Wife, Jo. Manners and Dorothy his Wife, Tenants.

(1) IN FORMEDON in remainder againſt the huſband and wife, after ſummons returned, and eſſoin caſt, and before appearance the tenants levy a fine of the land in demand to a ſtranger *ſur cognizance de droit come ceo que* &c. with warranty. And afterwards they appear, and the demandant counts againſt them, who plead to iſſue, and at the return of the *venire facias* they make default, whereupon a *petit cape* is awarded, and returned ſerved, and the huſband makes default, and the wife comes in her proper perſon, and ſays that the land is her right, and prays to be received to defend her right; and the demandant counterpleads the receipt by the fine above, and ſhews the purchaſe of the original writ, and all the proceſs and pleadings as above, and concludes with an eſtoppel to be admitted to defend her right againſt the agreement by the fine aforeſaid; upon which the wife demurs in law. And after long argument at the bar, and much reaſoning upon the words and intent of the ſtatute of receipt *Weſt.* 2. c. 3. for defending the wife's right, whereas it appears by the fine that ſhe hath not any right &c. it was ruled by the juſtices that the counterplea above was not good, but that the right of the wife ſhall be referred always to that right which ſhe had at the time of the writ purchaſed, which by the preſervation of the law ſhall be always in one and the ſame ſtate without making any change either for the profit or advantage of the tenant or demandant, and that the words preceding the prayer to be received, *ſc.* "*that the tenements aforeſaid* "*are the right of the wife*" are not material or traverſable, for the demandant cannot controul or counterplead them. And the entries are both ways &c. and many authorities of books cited to prove that: wherefore it was * adjudged that

After eſſoin caſt in formedon againſt baron and feme, though the feme aliene her right, ſtill on default by the baron ſhe ſhall be received to defend, as ſhe had right when the writ was purchaſed.

Dy. 298. a [341 a. 1. And 18. Bendl. 198 Dal. 107, Co. Ent. 328. } S. C.

2. Ro. Ab. 444.
1. Ro. Rep. 443.

9. Aſſ. 11. 12. Aſſ. 41. 22. Aſſ. 13. Co. 111. b.

19. E. 3. reſceit 113. 21. H. 6. 13. 21. E. 3. 53. Error. 74. 4. Aſſ. 11 31. E. 3. Incumb. 6 38. E. 3. 11. Lit. pl. 490. 10. E. 4. 2.

20. Aſſ 2. 18. E. 4. 16. 5 H. 4. 1. 38. E. 3 10. counterpled. reſceit 4. 9 E. 4. 16

* [316. a.]

that the counterplea is not good, but that the wife is receivable, wherefore ſhe was received &c. See the beginning fol. [298. a. pl. 28. ante.]

A. conveys to the uſe of himſelf and his wife for their lives, then ſows the land and dies, the wife and not the executors ſhall have the crop.

Co Lit 55. b. 1. Ro. Ab. 72. Hob 132. 48. E. 3. 13. a. Co. 5 116. b. 8. E. 3. 54. Damages 110. 7 E. 3. 67. 21. H 6. 37. a. Perk. 99. 513. Lit. 14 b 393.

37. H. 6. 7. a. 20. Aſſ. 6. 9. F 3 24 67. 7. H. 4. 17. 84. 10. Aſſ. 6. Dy. 61. 220. 317.

[Com. dig. Biens (G. 2.)]

(2) FEOFFMENT is made to divers to the uſe of the feoffor, and his wife, for the term of their lives, remainder to the heirs of the huſband. The huſband ſowed the land, and made executors, and died, without making any legacy. Whether the wife or the executor ſhall have the crop, *quære*. It ſeems that the wife, ſurviving, ſhall have it by 8. *Li. Aſſ.* [pl. 21.] But if the wife had not been jointenant with the huſband, it would be otherwiſe, for the uncertainty that the huſband had in the land. And 46 *Li. Aſſ.* 2. If the huſband ſow the land of his wife, and the wife die, or tenant for term of *auter vie* do it, and before &c. *ceſtuy que vie* die, the heir, or reverſioner ſhall enter, yet he who ſowed ſhall have the crop &c. Alſo this caſe is ſtronger for the wife, becauſe this jointure was made by the huſband himſelf during the coverture, and is a bar, and recompenſe of her dower of all the reſidue of the heritage of the huſband, when ſhe hath made her election according to the ſtatute of 27. *H.* 8. c. 10. And if it had been aſſigned to her by the heir for dower, ſhe ſhould have the crop by the common law, becauſe ſhe ſhall have dower *de optimâ poſſeſſione viri* &c. to which opinion CATLYNE, WHIDDON, WRAY, and MANWOOD, and BENDLOWES aſſented; but SAUNDERS, SOUTHCOT, HARPER, and PLOWDEN *e contra*. And at length by the award of DYER and PLOWDEN the executor ſhall have the fourth part of the grain threſhed *s.* 10 quarters in recompenſe of the ſeed &c.

Raſt. Uſes 9. 4. Co. 3. Perk. pl. 521. Co. Magna Chart. 81.

Whether a juror who was not an hundredor at the return of the *venire facias* but be-

(3) A Juror in the exchequer who was not an hundredor at the return of the *ve. fa.* but is become an hundredor at the return of the *diſtringas jurat'* was chal-

(2.) 5. Jac. B. R. *Arnold* and [*Skeales*] caſe [Noy 149.] that the wife ſhall have the emblements; the opinion of the chief juſtice, and the ſecond juſtice; but two juſtices againſt the wife. —But they were reſolved that the law was for the executor of the huſband, by POPHAM B. R. And his opinion was accordingly, Eaſt. 35. Eliz. in the argument of the caſe *James* v. *Portman* [Ow. 102. Cro. Eliz. 314.]

lenged

lenged for the hundred. And whether it be ſufficient, or not, the court there doubted: and Baron BIRCHE was ſent into the Bench, to know the opinions there. And Juſtice HARPER and all the clerks there thought, that he ſhall be holden ſufficient hundredor, becauſe the challenge is not entered in the præterite tenſe but in the preſent *ſ. nihil habet* within the hundred, *nec commoratur* in the ſame &c. and ſo it would be if he was returned upon a *tales* for defect of hundredors. But DYER thought the contrary, for by the intendment of the law, the third part of the jury ought to have knowledge *de rei veritate*, and therefore ſhould be of the viſne at the return of the *ve. fa.* in which writ the iſſue is mentioned by the ancient courſe of *C. B.* although it be otherwiſe in *B. R.* and the exchequer: for it is reaſonable that the jury ſhould be inſtructed by the ſheriff of the iſſue which they ſhall try upon their appearance, before their coming out of the country &c. And theſe words *nihil habet nec commoratur* ſhall have relation to the paſt time; for the law is that if a juror was an hundredor at the *ve. fa.* returned, he ſhall be ſworn as an hundredor, although afterwards before he is ſworn he aliene his land, or change his commorancy, for thereby his knowledge is not gone, nor impaired, and yet he is no hundredor there at preſent, wherefore &c. and afterwards other judges were of divers opinions, therefore *quære.*

came ſo before the day of trial may be challenged for the hundred —*quære.*

2. Ro. Ab. 635. Dy. 100. 12. Aſſ. 11. 7. H. 4 47. Dy. 353.

12. H. 7. 4. b. 8. R. 2. Challenge 176. 4 H. 4. 12. 14 H. 7 2. 21. E. 4. 25. 21. H. 6. 39. 32 H. 6. 27. 19. H. 6. 39. 2. E. 4. 1.

4 H. 4. 2. a.

1. Inſt. 157. a.

[See ante 25. a. pl. 156. note (a.)]

WARWICK.

*(4) THE manor of *Arrowe* in the county aforeſaid, whereof *Jo. Conway* knight is lord, hath a common waſte of 300 acres and more, within the manor and county. And Lord *Abergavenny* is lord of the manor of *Incleborough* in the county of *Worceſter*, which hath alſo in it a great common waſte, lying contiguous, without any ſeparation, but ſufficiently known by ancient metes. In which waſtes the freeholders, and others of the manors, have intercommoned by cauſe of vicinage from time whereof memory &c. with all manner of beaſts, levant and couchant upon their tenures at all times of the year. And now lately Sir *J. Conway* hath encloſed his waſte by a great ditch and quick-hedge. And a freeholder of the other manor hath put in his beaſts which were

Where there is common for cauſe of vicinage between two, and one incloſes, though the other's common is not gone, he cannot put his cattle into that land; but they may eſcape thither of themſelves. Dy. 47.

* [316. b.]

16. H. 8. 4. 23. H. 7. 13.

4. Co. 38. b. 7. Co. 5. b. where metes are known & may incloſe.

were levant and couchant upon his tenure, in the waſte incloſed, to uſe his common there, which were diſtrained by the command of Sir *J. Conway* for damage feaſant. And the freeholder claimed his common there by preſcription, as appurtenant &c. without pleading any thing in the plea of the vicinage, and iſſue joined upon the traverſe of the preſcription. And the trial awarded from both counties, and in each panel twelve only returned. And now the party-inqueſt was charged in the bench, and found nothing. And it was holden by MANWOOD Juſtice the firſt day of his ſitting in the bench, that ſuch commoner by cauſe of vicinage may not drive, or put in his beaſts into the other waſte at firſt; but firſt in his own common, and then the beaſts may well ſtray, and go into the other common, without being diſtrained. And this agrees with 13 *H.* 7. c. 10. [fol. 14. pl. 3.] in *treſpaſs*. But the book of *Entries* fol. 567. in treſpaſs concerning common is not ſo, but that he put his cattle there immediately &c. And note, in the caſe above it appeared by the evidence, that the lords and their tenants intercommoned in the ſaid waſtes, and that each of them had uſed a drift two or three times in the year, and every commoner paid a pound-penny, and every ſtranger paid more, *s.* five pence for each parcel &c. therefore it ſeems to be a common by cauſe of vicinage. And at length at the requeſt of the jury, who could not agree, but were ſix againſt ſix, by mediation of the court the matter was left to the award of the Biſhop of *Worceſter*, and *Thomas Lucy* Knight, and if they cannot finiſh it before the next term, the preſident of the Marches of *Wales* ſhall be umpire &c.

48. E. 3. 28. 30. 48. Aſſ. 5. Fulb. 69. 40. E. 3. 30.

1. Inſt. 122. a.

[11 Mod. 72. 73.]

32. H. 8. 47. b.

Gavelkind land deviſed to the eldeſt ſon, on condition that he pay 100l. if he do not pay, whether the youngeſt may enter upon a moiety—*quære*.
Plow. 415 F. Nat 201. C. Dy. 33. a. 74. 343. b. 31. Eliz 481. 25. H. 8. 4. R. 393. 3. Co. 21. a. 2. Leon 114.
[See Robins. on Gavelk. 121. 22. and the books cited in marg of Cro. Eliz. 205. 4th edit.]

(5) A MAN ſeiſed in fee of land in gavelkind had iſſue two ſons, and by his will deviſed the land to the eldeſt ſon in fee, on condition that he ſhall pay to the wife of the deviſor £. 100 at a certain day: at which he failed of payment. Whether the youngeſt ſon may not enter into the moiety upon his brother as by a limitation implied in the eſtate if the condition be not performed—*quære* by MANWOOD.

Puttenham's

* Puttenham's Caſe.

(6) GEORGE *PUTTENHAM* was outlawed in *London* at the ſuit of one, but the *exigent* was delivered by the ſecondary to the plaintiff, or his attorney, ſo that at the day the *exigent* was not returned; upon which it was witneſſed in the Court for the Queen, that he was outlawed, and a writ prayed and directed to the ſheriffs of *London* according to the cuſtom (as it is ſaid), and not to the coroner (who is the mayor,) to certify the Court of this outlawry; which was certified accordingly, &c. And now in a writ of *Covenant* brought by *P.* this outlawry was pleaded in diſability of his perſon &c. *quære* whether well? And it was ſhewn to the Court by *C.* the ancient ſecondary that the cuſtom of the city always hath been that the judgments of the outlawries in the huſtings is not given by the mayor, or his deputy coroner, (as is done in other counties of the kingdom,) but only by the recorder, and the return generally made, without ſaying, by the judgment of the coroners; and ſo are the precedents by all the prothonotaries. And afterwards the defendant relinquiſhed the plea of outlawry, and pleaded in bar, for the outlawry certified as above ſhall be good; and ſufficient as to the Queen, although it ſhall not be ſo as to any ſubject. The like *E.* 5. fol. 222. [b. pl. 23. *ante.*]

In London the recorder pronounces judgment of outlawry; and a writ to certify the outlawry ſhall by the cuſtom there be directed to the ſheriffs;—yet though their certificate be good for the king, it is not ſo for a ſubject; and if the *exigent* be not returned, the outlawry is not pleadable in diſability.

N Ben. 17. [Benl. 206.] Finch. 116 43. E. 3. 18. a. 27. E. 3. 80. b. 36. H. 6. 24. 2. Ro. Abr. 805. b. 8 Co. 126. Stamf. 51. Sta. prer. 96. F. 28 Aſſ. 49. 1 Inſt. 388. b.

[2 H. H. P.C. 206. See 2 Hawk. P.C. 634. Gilb. Executions 183, 184.]

Vernon's Caſe.

Trin. 14. El rot. 952.

(7.) IN dower, the tenant pleaded feoffment of certain land made by his father, during the coverture between the demandant and him, to certain perſons, to the uſe of the huſband for his life, remainder to the demandant then his wife for her life, remainder over to the right heirs of the huſband, and averred that it was for jointure &c. And that the demandant agreed thereto, ſince the death of her huſband &c. To which the demandant ſaid, by proteſtation, that that feoffment was not for jointure *prout* &c. but for replication ſhe ſaid, that well and true it is that the feoffment was made to the

A life eſtate in remainder after the death of the huſband limited on a condition, is a good jointure, and bar of dower, within the intent of 27 H. 8 c. 10.—And though not ſo expreſſed in the conveyance, yet that may be averred in pleading.

4 Co. 1. a.

[Bendl. 210. S. C. 3 Leon. 28. S. C. not S. P.]

the uſes aforeſaid, and further that the remainder to the wife was upon condition that ſhe ſhould perform or ſuffer to be performed the will of her huſband And afterwards he made his will. and thereby made the demandant his executrix, and died, and ſhewed the will *in hæc verba*, and that ſhe undertook the executorſhip &c. and averred the feoffment to be by deed indented, (which was produced,) and that the feoffment pleaded in bar, and the feoffment by the indenture were all one &c. and concluded the plea with an eſtoppel, *s.* judgment whether the tenant ſhould be received, and admitted to aver the ſaid feoffment for a jointure &c. Upon which replication the tenant demurred in law, and DYER thought that the replication is not good, for the bar is not traverſed, or confeſſed or avoided, for the averment which is made by the tenant that the ſaid feoffment &c. was for jointure *, with the agreement thereto afterwards by the wife *dum ſola fuit*, is a good bar of the dower by the ſtatute 27 *H.* 8. c. 10. and that ought to be traverſed, and the matter of the condition above may be good matter to induce a traverſe, (*s.* without this that it was for jointure), if the intention of the parties was not for jointure, but for other conſiderations.——And he thought that a jointure for a wife may be well enough conditional, if the wife after coverture accept it &c. as upon condition that ſhe keep herſelf ſole &c. and ſo thought other juſtices. Alſo the proteſtation above is merely contrary, or ſuperfluous to the ſubſtance of the bar &c. Alſo the concluſion of the plea above with an eſtoppel is not good; for there is no matter ſhewn to eſtopp the ſon by the indenture to which he is not party or privy, to ſay that the feoffment was for jointure wherefore &c. But HARPER Juſtice *e contra in omnibus totis viribus*; and he is one of the executors named in the will of the huſband &c. And in next *Eaſter Term*, the caſe was notably argued at the bar and bench, and three of the Bench *s.* MOUNSON, MANWOOD, and DYER thought, that the eſtate and conveyance above to the wife for her life in remainder after the immediate deceaſe of her huſband, (and although it was upon a reaſonable condition as above) may be well intended for jointure, according to the intent of the ſtat. 27 *H.* 8. and in effect by the expreſs words of the third *provi-*

And ſo Egerton the Solicitor-General thought 27, 28, Eliz. in the caſe of Lady Savage againſt Brocas for dower.

* [317. b.]

Dy. 124. pl. 47. & 248. pl. 74. 266. 316. 4 Co. 3.

40. E. 3. 46. B. Proteſtation 5.

Plowd. 276. b.

Dy. 340.

proviſo s. for the life of the wife, or otherwiſe in jointure, twice repeated &c. wherefore alſo DYER thought that although the fee ſimple be appointed over to the wife, or a joint eſtate made to the huſband and wife in fee, it may, if it be not expreſſed in the conveyance by writing to the contrary, be averred for jointure, contrary to the report of *Brooke* tit. *Dower* [pl. 69.] But for the exception to the pleading above, all againſt DYER; and HARPER pertinaciouſly adhered to his opinion as above; and all in favour of *Dower*, and that the eſtate above cannot by poſſibility be intended for jointure.

Raſt. Uſes 9.

[7 Bro. P. C. 70. 3 Term Rep. 475.] 8 Eliz. 248. a. B. N. C. 421. 2 Keble 867.

[See the caſes collected Vin. Ab. Jointreſs (H.) & (I.) 1 Br. Chan. Caſ. 292.]

Hauley *againſt* Sidenham.

(8) HAULEY, Eſq. brought an action on the caſe againſt *Sidenham* for a ſlander, for theſe words in effect, "*M. Halley* (innuendo the aforeſaid plaintiff) *is infected of the robbery and murder lately committed and doth ſmell of the murder*," (innuendo the aforeſaid felony and murder in form aforeſaid committed, which was before alleged to be perpetrated.) And by the verdict the damages were aſſeſſed at 300l. and upwards, and ſent into *B. R.* by the juſtices of *Niſi Prius*: And after long deliberation and argument the plaintiff had judgment *Trin.* 15 of Queen *Eliz.* for this word *infected* &c. contrary to the opinion of CATLYN.

"*H. is infected of the murder and doth ſmell of it*" are actionable words.

[Dal. 97 & 103. S. C.] [Kit. 173. b. cont.]

4. Co. 16. a. 18. 6. E. 6. 72. b. Mich. 40. 41. Eliz. C. B. by Anderſon and Owen that this is not law, in the argument of Grimſtone's caſe.

2. Bulſt. 249.

[2 Black. 959. Cowp. 276.]

(9.) TWO men being ſeverally ſeiſed of two cloſes adjoining together, and the incloſure and fence between the cloſes belonging all to one of the men by preſcription, the cattle of the other by a defect of the fence, eſcaped out of his cloſe into the other: and immediately before the owner of the beaſts could drive them back into his own cloſe, the lord diſtrained them for ſervices (*a*). And whether he may do ſo was demurred in * law. See

A. & B. having adjoining cloſes, A. is to keep up the fence; by his default B.'s cattle eſcape through;—A.'s landlord cannot diſtrain them for rent. 6. E. 4. 8. 10. H. 7. 21. Dr. St. 75. 1. Inſt. 47 b. 2. Saunders 290. 22. H. 6. 37. 48. E. 3. 34 a. F. avowry 219.

* [318. a.]

(*a*) In 41. E. 3. 26. b. p. 23. this diſtinction is taken by *Belknap*, that for a cauſe which ariſes from the ſoil, a man may diſtrain the goods of a ſtranger, but not for an amercement or other cauſe which only concerns the perſon of the tenant. And ſee 1 Compl. Copyh. 154, 156.

11. H. 7. 4. a. 9 E 3. 80. Ceſſavit 7. Fulb. 11. b. 27. E. 3. 5. 8. 36. H. 6. Bar. 168. F. N. B. 100. 101. 10. E. 4. 7. 19. H. 6. 33. 21. H. 6. 5. 33. 29. E. 3. 35. [See the caſe of Kemper v. Crewe. 1. Ld. Raym. 167. 4th edit. and the books there cited.]

H. 39. *E.* 3. fol. 3. *Treſpaſs* & 22. *E.* 4. [49. b.] & 7 & 15. *H.* 7. [1. & 17. b. pl. 13.] and ſee T. 27. *E.* 3. fol. 11. [4. pl. 5.] iſſue taken upon the eſcape. But the caſe above was, that the diſtreſs was taken by a termor for rent reſerved upon a leaſe of part of the term for a term of years, and not by the lord for the ſeigniory. And therefore upon the matter, it was adjudged for the plaintiff, and againſt the avowant; for no default can be aſſigned in the owner of the beaſts for this eſcape, nor does any law oblige him to keep his cattle in his own cloſe, wherefore &c.

The Earl of Kent *againſt* Sir Henry Crampton.

If the demandant or tenant be created a peer after the return of the *venire facias*, want of knights is no cauſe of challenge.

Though the jury appear on a *habeas corpora cum proviſo*, ſtill the defendant cannot pray a *tales* till the plaintiff make default in that alſo

Co. Litt. 15. b. 4. El. 280. b.

2. Rol. Ab. 637. Dy. 265.

[See ante 107. b. pl. 27. note (a)]

(10) THE Earl of *Kent* by the name of *Reginold Gray* Eſq. brought a writ of *Entry* againſt Sir *H. C.* Knight: and the parties have pleaded to an iſſue, and the *venire facias* awarded, and the writ returned ſerved, and a panel returned accordingly, in which panel there is not any knight named; but the caſe is, that ſince this return the demandant is publiſhed and declared (at the time of *Chriſtmas* laſt paſt) by the queen and the heralds, to be Earl of *Kent* in right, and by deſcent, altho' he was not reputed or called an earl before. And likewiſe after this time, *ſ.* at the laſt parliament the tenant is made a baron by writ of parliament, and both parties have places and voices in parliament. And now the jury appeared in the bench, and the earl challenged the array becauſe no knight was returned, *ſed non allocatur*, for the admittance of both parties is to the contrary; and no default can be aſſigned in the ſheriff, for he had not notice of ſuch eſtate of any of the parties &c. And the caſe was, that the jury appeared upon an *habeas corpora* at the ſuit of the tenant, with a *proviſo* on the default of the demandant, altho' a continuance of the jury was regularly entered on the *jurata roll* by the demandant, but no writ was ſued, therefore &c. And now the jury remained for default of hundredors: and the tenant prayed a *diſtringas juratores* with a *decem tales*, and with *proviſo*, but the demandant would not conſent to that, nor would make any requeſt for the *tales*, but prayed an *alias diſtringas* without a *tales*; but the Court would adviſe thereof; and by the opinion of the clerks,

Dy. 193. 359. b. 215. 217. a. 21. H. 6. 22. 14. H. 7. 15. H. 7. 9. 2 Ro. Ab 666 672.

clerks, the *tales* ought not to be granted with *proviſo s.* at the requeſt of the tenant, before that a default in this requeſt of a *tales* appears in the demandant. And the *proviſo* ought to be when there are two writs of the ſame degree and quality.---Note this. And yet it does not appear by the entry on the roll at whoſe requeſt the *tales* is granted, but generally *s.* that the jury remains for default of hundredors &c. and let the ſheriff ſet forth ten *tales* &c. See the like for the *tales* above, *Staunford's Book of Pleas of the Crown*, fol. 155.

[See 3. Bac. Ab. 246. & the books in margin there and 2. Hawk. P. C. 574.]

Dy. 215. pl. 52.

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*(11) DEBT on bond to perform the articles and agreements compriſed in an indenture between the parties, on the part of the defendant to be fulfilled &c. The indenture was of a leaſe for years made by the plaintiff to the defendant, of tithes, rendering therefore annually during the term aforeſaid £. 4 &c. with this *proviſo* therein *s.* "That whereas one *A. B.* had a former leaſe "for years of the ſame tithes, if the defendant legally "and effectually attempt and proſecute without fraud by "action againſt the ſaid *A. B.* until a verdict ſhall paſs "againſt him for the ſaid *A. B.* ſo that by law the de- "fendant cannot recover it againſt the ſaid *A. B.* that "the ſaid rent of £.4 ſhould ceaſe, and that then and "thenceforth during ſo many years as ſhould then be to "come of the aforeſaid former demiſe, he ſhould be ex- "onerated of the aforeſaid rent of £.4 any thing in the "indenture aforeſaid to the contrary notwithſtanding." And the defendant pleaded to the indenture, and ſaid, that the ſaid *A. B.* always hitherto *hath had and enjoyed the ſaid tithes by virtue of the aforeſaid former demiſe*, ſo that the defendant by virtue of the ſecond leaſe could not have or enjoy it according to the indenture, and ſo no article or agreement of the indenture aforeſaid exiſted on his part to be fulfilled, and this &c. whereupon the plaintiff demurred. And the opinion of the Court was againſt the defendant: for the rent of £.4 is payable until a verdict paſs &c.

Bond by A. to perform covenants in an indenture of leaſe; one was that A ſhould pay rent, until he bring an action againſt B. tenant in poſſeſſion, and ſuffer a verdict againſt himſelf. It is not enough that B. quietly enjoys; there muſt be ſuch verdict before the rent ſhall ceaſe.

18. E. 4. 27.
Plow. 403. a.

*[318. b.]

Lit. 58.

Bargain and ſale of land "provided that it "ſhall be lawful for "the bargainor to retain "it for twenty years "withoutinterruption," whether this be a condition—*quære.*

(12) A MAN ſeiſed of land in fee bargained and ſold it to another in fee by indenture enrolled within the ſix months; which indenture immediately after the *habendum* hath theſe words following *s.* "Upon theſe conditions nevertheleſs hereafter in theſe preſents expreſſed, that is to weet, firſt, that if the ſaid vendor before the feaſt of *Penticoſt* next, well and truly content and pay to the vendee £.20, and alſo if the ſame vendor enfeoff the vendee of a certain meadow called *A.* in *D.* that then and from thenceforth this preſent bargain and ſale ſhall be utterly void, and that then and from thenceforth it ſhall be lawful to the vendor to reenter, and the ſame to rehave as in his former eſtate: provided alſo nevertheleſs, that it may and ſhall be lawful to the vendor to have, hold, retain, and occupy the premiſes before bargained and ſold, for and during the term of twenty years only next enſuing the date hereof, without interruption of the vendee, any thing before expreſſed to the contrary notwithſtanding &c." And the conditions of payment, and feoffment are not performed by the vendor according to the indenture. And afterwards within the twenty years the vendee entered upon the vendor, and interrupted him.---*Quære*, whether the bargain and ſale above by that be void, ſo that the vendor may re-enter &c. And this depends upon the *proviſo*, *s.* whether it be a condition, or only a reſervation *, grant, or agreement. See *Brooke* tit. *Condition* 195, where a *proviſo* ſhall make a condition, and where a covenant; but there are divers opinions againſt *Brooke*.

14. El. 311. a. 1. Co. 72. a.

Dy. 155. a. 222. a.

35. H. 8. Bro. Conditions 256. Dy. 115. a.

* [319. a.]

[Shep. Touch. 119.128. Bac. Ab. Condition (A).]

(12) *Sub conditione, ita quod, ſi contingat, proviſo*, are words of condition, but *ad effectum, et intentione, ad ſolvendum*, do not make a condition unleſs in the caſe of the king or deviſees, 10. Co. 42. Dy. 139 & 13.

Vernon *againſt* Manners and Wife, and others.

At the return of the *habeas corpora cum proviſo* the plaintiff may challenge the array if there be cauſe of challenge.

In a cauſe for the lands of the wife, couſinage of the ſheriff in the 9th

(13) A JURY appeared in the Bench on the morrow of *All-Souls*, *s* 21, at the ſuit of *Manners* and his wife and other tenants in a formedon in remainder upon a *habeas corpora cum proviſo*; and *Vernon* the demandant challenged the array, for couſinage between Sir *I. Zouch*, knight, ſheriff of the ſaid county, and *Manners* one of the tenants,

tenants, and ſhewed, how couſin: and in the pedigree were eight deſcents in the *Zouches*, and ſeven deſcents in the blood of the Lords *Roſſes*, between whom the conjunction of couſinage was made by one *Eliz.* the daughter of *W.* Lord *Roſſe* who was married to one *W.* Lord Z. &c. And this challenge was uſed as a principal challenge, and ſo allowed by the counſel at the bar, and by the Court; wherefore the tenants traverſed the couſinage *prout* &c. without, in manner and form. And by evidence given by three, that the pedigree above was confirmed by the ancient book of the heralds, and by two of them written on a paper, but neither the heralds nor book was preſent; yet the challenge was found true by two triors of the ſame array *ſ. Sterly* and *Fitzharbert*; wherefore the array was quaſhed: and a new *venire facias* prayed by the demandant directed to the coroners. See M. 21. *E.* 4. fol. 75. [63. b.] CHOKE ſaid, if a juror be to the 9th degree couſin to the party, if he can ſhew how couſin, it is a good challenge; which all agreed. But 40 *Lib. Aſſ.* [pl. 20.] in attaint, a juror was challenged for affinity, or alliance to the party, which was in a very remote degree; and alſo the land deſcended to the party of the part of his father, and the affinity was of the part of his mother to which blood the land ſhall never reſort. And therefore the challenge was not allowed. And note by T. 9. *E.* 4. 3. in appeal, and *E.* 19. *H.* 8. fol. 7. the manner of couſinage alleged in the challenge is not traverſable, but the couſinage only, by the opinion of the Court. And ſo it was holden by the Court in the principal caſe aboveſaid. And *quære* if the demandant had not prayed the *venire facias* to the coroners as above, whether the tenant *ſ. Manners* might not have the ſurmiſe allowed to him that the next ſheriff is his couſin, now, altho' &c. and therefore for his diſcharge from the vexation of this ſuit he prayed the *venire facias* to the coroners if the demandant do not proſecute the *venire facias* with effect.

degree to the huſband is a good principal challenge to the array.
The manner of the couſinage alleged in the challenge is not traverſable.
Plow. 425. a. S. C. Co Lit. 157. Hob. 233. 2 Ro. Ab. 637. 642. 41 E. 3. 9. b. [3 Bac. Ab. 252.]

[3 Bl. Com. 363.]

Chall. 143. 21 E. 4. 31. Plow. 75.

29 H. 8. 57. b. 7 E. 4. 4. Dy. 37. 9 E. 4. 6. a.

24 E. 3. 27. 3. H. 6. 39. 3 H. 4. 5. 18. H. 8. 2.

[Cro. Eliz. 581. Bul. Ni. Pr. 306.]

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(14) THE queen's tenant *in capite* had his lands extended, and delivered to the conuſee of a ſtatute ſtaple acknowledged by him, and died, his heir within

Whether an eſtate by ſtatute ſtaple is ſaved by 2. E. 6. c. 3. § 3. *quære.*

(14) Co. Lit. 77. b. that he ſhall have it to his own uſe, by the equity of that ſtatute.

age,

Co. Magna Chart. 688. 24 H. 7. 23. a. 4. Co. 82. b. if he be ouſted he may hold over. Raſt. Eſchcators 15.

age, and the tenure, and dying ſeiſed in fee is found by office, but the extent and execution * are not found. Whether the conuſee ſhall be compellable to anſwer the value to the queen, or ſhall receive it to his own uſe by the ſtatute of 2 *E.* 6. [c. 8.]

Of two executors plaintiffs one is ſummoned and ſevered, after judgment he cannot acknowledge ſatisfaction though his releaſe before judgment would be a bar. 28 H. 8. 3 b. 11. H. 4. 84. 9. E. 4. 12. 11. R. 2. privilege 2 40. E. 3. 14. 15. Dy. 359. pl. 46. 21. E. 4. 25. 4. H. 7. 5. 16 H. 7. 4. 6. H. 4. 4. 11 H. 4. 84. 37. H 6. 9 b. 10. H. 6. 2. b. 21. H. 7. 25. b. 15. E. Exor. 105. 106.]

(15) *NOTE*, if two executors bring an action of debt, and one is ſummoned and ſevered, and the other proſecutes to judgment; now if the executor who was ſevered, wiſhes to acknowledge a ſatisfaction of the debt, and damage recovered, he ſhall not be received, (by all the juſtices and prothonotaries of the court), becauſe he hath no day, nor is privy to the judgment, but ſecluded from it. And yet his releaſe before judgment would be a bar notwithſtanding the ſeverance.

3. Executor 80. 5. E. 2. Bref. 802. 48. E. 3. 15. a. Mo. 620. [Wentw. off. Exor. 105. 106.]

The king having a rent out of a manor, whereof A. and his wife were jointenants, by letters patent "*gave, granted, remitted, releaſed, and renounced*" the rent, *habendum et percipiendum* to A. and his heirs, this is either a grant, or extinguiſhment at the election of the patentee. Rol. Contin. 473. Dy. 251. pl. 91. 263. pl. 34. 14 H. 8. 6. b. Fitz. 124. B. 11 H. 7. 13. Cro. 129. pl. 97. 3 E. 3. 36. 37. 5. E. 3. 16. 16 H. 7. Releaſe 45. Plowd. 156. b. 3 Cro 163. 3 Leon. 154. Perk. 81. 83. Lit. ſect. 543. Mo. 493. 9 H. 7. 2. Godb. 127, 8. 4 Mar. 140. a. 1 Rol Ab. 533. [2 And. 20. Cowp. 599, 600.]

(16) QUEEN *MARY* having a rent of £.20 *per annum* iſſuing out of a manor, whereof a man and his wife were jointly ſeiſed in fee, (for and in conſideration of a ſum of money and other conſiderations given and paid by the huſband) by her letters patent, gave and granted, remitted, releaſed, and renounced to the ſaid huſband, and to his heirs, the ſaid rent of £.20; and afterwards the huſband died and the wife ſurvived. Whether ſhe ſhould pay the rent to the heir of the huſband or not, *quære*. And it depends upon this, whether the letters patent ſhall be taken in law for a releaſe only, or may be uſed as a grant at the election of the huſband, and his heirs, and not for releaſe, or extinguiſhment. And as it ſeems to me the patentee ſhall have election to uſe the patent as to him ſeemeth beſt. And this by 9 *H.* 6. [fol. 22.] in *quare impedit*. And in the caſe above, the huſband by his laſt will deviſed the rent to another which was a declaration of his intent and election. And alſo in the *habendum et percipiendum* the rent aforeſaid, to th aforeſaid patentee, *and to his heirs and aſſigns*, the intent of the queen appears to have the rent continue if the patentee choſe &c.

Moore

Moore *against* Dame Browne.

Trin. 14. El. rot. 903. [or 930.]

(17) TRESPASS on the Caſe for the malicious turning aſide of part of a courſe of water of a conduit, which ran from a fountain in *Clerkenwell* to the houſe of the plaintiff, which was the ſite of the late houſe of the friars preachers *s.* the *Black-fryars London*. The defendant pleaded not guilty; and in evidence at *Guildhall* at *niſi prius*, it appeared that Sir *Humphrey Browne* in his life upon finding an old pipe near the main pipe lying in his yard, where he had built his new houſe in *Cow Lane* in the pariſh of *Saint Sepulchre* (which was a houſe belonging to the late monaſtery of *Watton* in the county of *York*) made a little pipe and a cock out of the main pipe, drawing thereby water to ſerve his houſe, and to ſtop it * again at his pleaſure; which the ſaid *Dame* ſince the death of her huſband, when ſhe lived there had uſed and occupied:—and whether ſhe by that ſhall be adjudged guilty, and a treſpaſſer upon this diverſion, becauſe ſhe was not the firſt who diverted, but her huſband was, and the wife only a continuer of the diverſion, was doubted. But becauſe the portion of water turned aſide had not continual courſe or running, but was oftentimes ſtopped by the cock, and opened again at the pleaſure of the wife *toties quoties*, that may be called in her a new diverſion &c. And ſo ſhe was found guilty, and damages £. 10. And ſo was the opinion of the juſtices *in banc*. But the writ and count were faulty in that the plaintiff was not ſuppoſed to be owner of the ſaid ſite, and meſſuage of *Black-fryars* at the time of the diverſion, but only at the time of the action commenced *s.* whereas the plaintiff *is ſeiſed*, and does not ſay *was ſeiſed* &c. therefore the plaintiff was not damnified by the diverſion; wherefore the plaintiff could not have judgment given.—But by *Bendlowe's Reports* [216] judgment at length was given. And the roll being ſearched, it appears that judgment was given, and the plaintiff acknowledged ſatisfaction of the damages, and the defendant afterwards brought a writ of error.

A. fixed a ſmall pipe and cock into the main pipe, and diverted a water courſe to B.'s houſe; after his death his wife occaſionally uſes it, it is a freſh diverſion in her.

In an action for this diverſion B. ſhould ſtate that *he was* owner of the houſe at the time, not that *he is* in the preſent tenſe.

[Bendl. 215. S C.] Dy. 248. 5. Co. 12. b. Noy. 112. p 475. 2 Leon. 103.

* [320. a.]

That being notoriouſly known, is good without ſaying in what pariſh it is. Bendl. ca. 267. 14 H. 8. 31. 5. Co. 101. b. 3 Leon. 174. Yelv. 144. 3 Cro. 402. 2 H. 4. 13. b. 4. Aſſ. 3. 2. [1. Com. dig. 215. Bul. Ni. Pr. 75. 3 Bl. Com. 221. 2 Lord Raym. 1568.]

19 Aſſ. 6.

Opinio Coke 5. 101. a. 9. 53. b. Dy. 322.

5 Cro. 751.

[1 Com. Dig. 217.]

Grey *againſt* Baude.

Search ſhall not be granted in aid prayer —but only in petition of right.

[29 Vin. Ab. 295.]

2 Keb. 144.
Dy. 258.
7 H. 5 peti. 6.
16 E. 4. 6.
2 R. 3. 13.

(18) IN *ejectione firmæ* brought in *B. R.* by *Grey* leſſee of the Earl of *Kent*, againſt *Baude*, leſſee for a term of years of the leaſe of *Henry* late Earl of *Northumberland*, the reverſion of which leaſe was in *Thomas* late Earl of *Northumberland* by deſcent as heir &c. who was attainted by parliament in the 13th year of the preſent queen, for the rebellion in the county of *York* &c. by which forfeiture the reverſion came to the queen; he prayed aid of her, and it was granted. And in the chancery the defendant prayed for himſelf and the queen that the Court would grant a ſearch for the queen's title: and whether ſearch be of right to be granted, was much doubted there. And the diſcuſſion thereof was committed by the Court there to DYER, SOUTHCOT, WRAY, and MANWOOD, juſtices of each bench: and having heard the arguments of counſel on both ſides, the opinion of the juſtices was, that no ſearch in this caſe is to be granted, becauſe there will be no damage or prejudice to the queen, altho' the plaintiff ſhould recover in *ejectione firmæ*. Alſo it is not grantable in any action but in a petition of right &c. viz. where one as adverſe to the title of the queen, impleads the queen, and the queen's title is not well known &c. See the ſtat. of 34. *E.* 3. c. 13. [ſt. 1. c. 14.] for ſearch. And no precedent can be ſhewn, that ſearch was granted upon ſuch aid prayer. And in the next *Trinity*, prayer was made by the ſame *Grey* the leſſee who is now Earl of *Kent* (*ſ.* brother and heir to *Reginald Grey* late Earl of *Kent*, who died laſt *Lent* without iſſue) in the chancery *, to have a *procedendo*; and that matter was much debated. And at length, by the advice of CATLYN and DYER, becauſe no clear title appears for the queen for the eſcheat, a *procedendo in loquelâ* was granted, but not an judgment, *regimâ inconſuetâ*, &c.

Finch. 77. 27. H. 8. 28. b. 9. E. 4. 52. a. Dy. 198. b. 2 Inſt. 276.

Eaſt. Ayd. to the king.

*[329. b.]

22. Aſſ. 28.

Hilary

Hilary Term,

15 Queen Elizabeth.

The Caſe of Eccleſton and Wife, in Error.

(19) JO. *B.* having iſſue *I.* a ſon, and the ſon having iſſue two daughters, levied a *fine ſur cognizance de droit come ceo que* &c. and took back an eſtate by grant and render to himſelf for the term of his life, remainder to his ſon, and to his heirs male in tail, remainder to the eldeſt daughter in tail, remainder over to the youngeſt daughter in tail, with divers remainders over, and the fee to the right heirs of the ſaid *I. B.* The father died, the ſon alſo died without iſſue male, the eldeſt daughter entered as into her remainder. The youngeſt daughter in her own name, and in the name of her eldeſt ſiſter, as couſins and heirs of the grandfather, brought a writ of error out of the Chancery at *Weſtminſter* againſt the heir of the conuſee bearing *teſte* the 26th day of *April* in the 9th year of the preſent Queen, returnable *octabis Martini*. And the writ was directed to the juſtice of *Cheſter*, or his lieutenant, and not to the chamberlain: note this. At which day the writ was returned with the record and proceſs of the fine accordingly; but the eldeſt daughter did not come, wherefore ſhe was ſummoned and ſevered. And the other alone ſued a *ſcire facias* againſt the heir of the conuſee *ad audiendum errores* who had nothing in the land, who came into court. And no *ſcire facias* awarded againſt the terre-tenant. Note this.

The errors aſſigned were three. Firſt for the want of entry and nonpayment of the king's ſilver or money in the roll of *Cheſter*: but it appears upon the back of the writ of covenant that the fine of the king's ſilver *pro lic. conc.* was aſſeſſed at 40s. and the hand of the juſtice *s. Nicholas Hare* Knight, ſet to it. Alſo the ſecond, for want

The writ of error to reverſe a fine in Cheſter is not ſued out there, but from the Chancery at Weſtminſter, returnable into *B. R.* and directed to the chief juſtice of Cheſter, and not to the chamberlain. And the court in Cheſter may examine the errors upon this writ (*a*) But the party grieved may have a ſecond writ returnable at once with the proceſſes and records into B. R. which court ſhall examine both judgments.

On error to reverſe a fine the terre-tenants ſhould be made privies by *ſcire facias*, as they may loſe the land.

Want of entry of the king's ſilver on the roll at Cheſter is not error, an inſorſement of it on the writ of Covenant is ſufficient.

Nor want of entry of the note of the fine.

Nor, that the concord though taken out of court was not aſſigned with the hand of the chief juſtice there, as is uſual in C. B.

Co. Ent 231. S. C. [Jenk. Cent. 6. c. 22. S C.] Regiſt. 51. lib. Inſt. 272. Dy. 80. pl. 2. 345. a. 29 Aſſ. 35. [2 Lev 111] [Cruiſe on Fines, 24. &c.]

(*a*) By 43. El. c. 15. § 6. it is provided that all fines levied in the county of the city of Cheſter ſhall not be ſubject to be reverſed upon writs of error to be ſued and proſecuted before the high juſtice of the county palatine of Cheſter, as other judgments given in the Portmoot court.

of a concord of the fine aſſigned with the hand of the juſtice, who took the acknowledgment, as is uſual (if it be taken out of court) in *C. B.* Alſo the third, for want of an entry of a note of the fine which commenced between *A.* plaintiff, and *B.* deforciant &c. as is uſual in *C. B.* and remains with the chirographer before the engroſſing of the fine. But it appears that the chirographs *s.* the indentures of the fine were * perfect in all reſpects, and one part remains among the records of the Court, as is the uſage there. And no other plea of the fine, than by the uſage in *C. B.* remains with the *Cuſtos brevium*, upon the back of which the ſixteen proclamations are uſually entered.

West's Presidents Fines fol. 5. sec. 17. [Cruise on Fines 32.]

* [321. a.]

West's Presidents Fines fol. 46. sec. 157.

(20) And to theſe errors, the defendant rejoined *in nullo eſt erratum* &c. And two things were moved wherefore the Court ought not to proceed to the examination of the errors, one, becauſe no writ of *error* was firſt made and brought in *Cheſter*, the other becauſe no *ſcire facias* is yet awarded againſt the terre-tenant by name, or generally againſt the terre-tenants without naming any one. But for the firſt thing, the manner and uſage in *Cheſter* hath been always that the writ of *error* hath been purchaſed out of the Chancery of *England*, returnable in *B. R.* altho' it be out of the county palatine. For in all the king's charters of the franchiſes and liberties of *Cheſter* writs of error are excepted. And at the next county court after the writ purchaſed, the plaintiff ought to bring the writ of error into the Court there, where it ſhall be opened and read, and the plaintiff immediately aſſign the errors: and if there appear to the judges there manifeſt error in the record, it ſhall be there reformed, and if they think good they may award a *ſcire facias* againſt the defendant *ad audiend' errores* returnable at the next county court; and if he appear, or make default, upon the return of the *ſcire facias*, they may proceed to the examination of the errors aſſigned on the record, without receiving any plea of a releaſe of errors, or of all right in the land, or ſuch like. And if they find error, it may be ſet right there, and the judgment reverſed; or it may be affirmed, if there be no error either in the whole or in part. And if

Dy. 303.

4 Inſt. 213, 214. 1 Ro. Ab. 745. Dy. 345. pl. 6. 2. Aſſ. 1 Davies Rep. 62. a. 19. H. 6. 12. a. 21. H. 7. 33, 34. 6 H. 4. 8. a. 34. H. 6. 42. 14 E. 3. Error 6. Nat. 21. G. Dy. 350.

Note the regiſter 17.

2 E. 3. 33.

34 H. 6. 24. Dy. 345.

(20) *Quære* the law ſince 32 H. 8. 43. whereby county courts are taken away in *Cheſter*. And whether the ſeſſions newly ordained are not in lieu of county courts.

the defendant in error be grieved by this laſt judgment of reverſal, he may bring a ſpecial writ of error, reciting the former writ, and to have the records and proceſſes of both judgments removed into *B. R.* where the errors of both may be examined. (21.) See a like matter 6 *H.* 4. [8. b. pl. 46.] And in the printed regiſter fol. 17. And in † *Lib. Intrac.* 272. And 7 *H.* 8. ſuch a writ of error was brought by † *Legghe* againſt *Colyn* and others, upon a judgment in aſſize before the ENGLEFIELDES *ſenior* and *junior*.

7 H. 6. 44. b.

[Co. Ent. 228. b. 231. a. Raſt. Entr. 290. a.]

34 H. 6. 42.

1 Keb. 54.

And for the other thing, ſome of the juſtices of each bench thought, that the moſt perfect and ſure way would be to award a *ſcire facias* againſt the terre-tenant, before they proceed to the examination of the errors; for it may be that he hath ſomething to plead in bar of the writ of error, as a releaſe, or ſuch like, by which the court ought to be eaſed of their trouble in the examination of their errors; for altho' they ought to reverſe the judgment againſt the party or privy, yet the plaintiff cannot be reſtored to all that he loſt until the terre-tenant be made privy by *ſcire facias*; * for otherwiſe if he be ouſted, he may have aſſize: and eſpecially where the parties to the firſt judgment are dead, as appears in this caſe; ſo that neither the heir of the one or of the other, nor the terre-tenant is known; wherefore &c. And beſides, it would be a diſgrace to the court, if they ſhould adjudge the party plaintiff to be reſtored to all that he hath loſt, and this ſhould not be put in execution until the terre-tenant be made privy &c. and afterwards on account of that opinion, a *ſcire facias* was awarded againſt the terre-tenant, who was the eldeſt daughter, who was ſummoned and ſevered as above, and was returned, "warned" and appeared, but ſaid nothing to the errors aſſigned &c.

9 H. 6. 47.

[3 Mod. 119, 274. Sir Tho. Raym. 16. Cruiſe on Fines 292. 1. Burr. 360.]

4 H. 7. 11. 26. H. 6. 2.

* [321. b.]

4 H. 7. 11. 26. Aſſ. 59.

7. 9. E. 4. 23. b. 28. H. 6. 10. b.

And note, that the heir of the conuſee before he rejoined to the errors had alleged a diminution of the record *s.* as well in the note and concord as in the king's ſilver: and hereupon *a certiorari* was directed to JOHN THROCKMORTON Knight, juſtice of *Cheſter*, who returned that there was not any diminution, but that he had certified the full and entire record, and proceſs of the fine, upon the writ of error, wherefore &c. And upon this the plaintiff, as above, prayed that the Court would proceed to the examination

amination of the errors aſſigned, and that the other ſhould rejoin to them &c. to which the other ſaid, *in nullo eſt erratum*; and the plaintiff *ſimiliter*, upon which *curia advi-ſatur* &c.

Dy. 346. a.

And note, that at the ſurmiſe of the plaintiff that the eldeſt daughter who was ſummoned and ſevered was terre-tenant, a *mandamus* was awarded from *B. R.* to the chamberlain of *Cheſter*, or his deputy, to make a writ to the ſheriff of *Cheſter*, to garniſh the terre-tenant &c. *ad audiend' errores ſi* &c. And *R.* the earl of *Leiceſter*, chamberlain of the county palatine of *Cheſter*, returned the *mandamus*, and likewiſe the writ directed to the ſheriff, who was *H. C.* knight, ſerved. And by the ſame precedent in *Lib. Intrac.* ſuch a *mandamus* was directed to the juſtice of *Cheſter*, and not to the chamberlain,—therefore *quære* &c. thereof; and who hath the cuſtody of the ſeal of the writs there. And *Mich.* 17 and 18 the fine above was affirmed to be good. And the plaintiff had £.240, by the award of GERRARD and BROMLEY, *attorney* and *ſolicitor*, and WRAY *chief juſtice*, umpire.

[2 Lev. 111.]

Waller *againſt* Lambe.

Hil. 16. Eliz. rot. 560.

If tenant for life grant his eſtate to one *and his heirs*; in *formedon* againſt the heir, an infant, he ſhall not have his age.

[1 And. 21. Bendl. 232. 4 Leon. 169. S. C.] Lit. 60. 739. 6 Co. 4. Dy. 148. pl. 79. 7. H. 4 46. 8. H. 4. 15. Account. 56. 11. H. 4. 42. 1. Plo. 556. b. 10. Co. 98. a. he ſhall not have his age. 3. E. 3. 17. 39. E. 3. 35 17. E. 3. 48. 19. E. 3. fines 47. 39. E. 3. 1 2 Co. 74. b. [3 P. Wms. 368.

(22) TENANT for term of life reciting his eſtate, grants it by fine *to one and his heirs*: the grantee enters, and dies ſeiſed, his heir within age enters: whether he ſhall have his age in *formedon*? was moved by *Jeffreys*. And it ſeemed to divers, that he ſhall not have his age, becauſe in effect he is only an occupant; altho' the courſe of fines in ſuch caſe, is, to limit the word heirs to the grantee, to avoid the uncertainty of occupancy. And at length, at the peril of the demandant, he was ouſted of age; but his prayer ſhall be recorded for the benefit of error, if it be &c.

Carter 88. 3 Com. dig. 246. See 4 Term Rep. 289.]

Lord Cromwell's Caſe.

* [322. a.]

A bye-law (by the homage, under a cuſtom to make bye-laws) that no tenant put his cattle into the common

(23) THE Lord *Cromwell*, ſeiſed in fee of the manor of *Northeltham* in the county of *Norfolk*, avowed the taking of the plaintiff's cattle * in the place &c. as in parcel

parcel of the manor, for the pain and forfeiture of 10*s.* by the plaintiff, by reaſon of a breach of a bye-law made by the homage of the manor, for the putting in and depaſturing of cattle in the common, (the *Shacke*) before the farmer of the rectory of *Northeltham* aforeſaid ſhould have rung a bell in the belfry of the church there; and ſhewed that the plaintiff was one of the homage who made the ſaid bye-law, and one of the tenants there; and maintained this, by a cuſtom, by preſcription to make bye-laws, for the better ordering of the tenants &c. and alſo to diſtrain for the forfeiture in any place within the manor aforeſaid, without ſaying what cattle, and without alleging any preſentment of the homage of this breach of the ordinance. And upon this avowry the plaintiff demurred in law, and judgment was againſt him, and that the avowry by the Lord *Crumwell* was good. And a ſimilar caſe was in the ſame term between the ſaid *Franklin* and *Chauntrell*, and others, bailiffs of the aforeſaid Lord *Crumwell*, *Rot.* 801. [*Dal.* 95. p. 23. 3 *Leon.* 38.] for the pain and forfeiture of 4*d.* for every ſheep two years old feeding in the fields and common there, with preſcription to diſtrain in any place within the manor aforeſaid, without ſhewing in certain what cattle &c. (24.) And in *Mich.* Term in the 15th year, divers exceptions were taken by *Jeffreys* to the form, 1. becauſe the preſcription for the making of a bye-law was alleged to be *when there ſhould be need*, and *for the better ordering of the cattle* &c. and did not ſhew in fact that there was need &c. nor that it was for the better ordering &c. Alſo that it is not alleged in fact, that the Lord *C.* was ſeiſed of the manor at the time of the forfeiture; but this does not ſeem true. Alſo for the matter, 1. that this bye-law tends to the diſherſon of the commoner for ever, which

until the farmer of the rectory ring a bell, is good. And if it order a forfeiture for a breach, *for which the lord ſhall diſtrain*, without ſaying, whoſe cattle, it ſhall be intended the cattle of the offender.
It is not neceſſary that a breach of the bye-law ſhould be preſented by the homage.
[4 Vin. Ab 309. 1 Bac. Ab. 463. March 28. 3 Lev. 48.]
See 5. Co. 63. Cro. Cat. 498. 1 Ro. Ab. 365, 366, 367, 11. Co. 43. 12. 21. H. 7. 14. 46. 44. E. 3. 19. 2. 21. E. 4. 28. Kitch. 64. Mo. 584. 1 Keb. 44. 21 H. 7. 20. in court baron preſcription.
1 Ro. Ab. 366. (A) 1. 2. Ibid (B) 1. & 367. 1.
[2 H. Bl. 11. 3. Lev. 281.]

Dy. 45.

Dy. 320.
[1 Leon. 190.]

(23) *Per Cur.* in C. B. [Goulds. 79. pl. 13.] and not denied by any, that every bye-law ought to be for the common utility of the great multitude; and therefore a bye-law that inhabitants ſhall not put their beaſts into the common fields till ſuch a day is good; but that they ſhall not put into the field of *J. S.* or of the lord, is not good. So not to cut the hay of the lord, for it is but for the private advantage of one man. 44. E. 3 19. where it is ſaid further that ſuch bye-law as is for the public good ſhall bind men abſent as well as preſent; if they do not come thereto upon the ſame proceſs.

(24) *Eaſt.* 42. Eliz. C. B. rot. 1332. *Per Cur.* that if A. be amerced in a court baron, his cattle alone ſhall be diſtrained, and not the cattle of his leſſee, becauſe it is a perſonal default, adjudged for in replevin between *Pell* and *Towers*, [Cro. Eliz. 791. Noy. 20. ante 317. b. pl. 9. note (a).]

1 Sid. 18. 1 Ro. Ab. 561. 11 Co. 45. 47 E. 3. 12. a. 2 H. 4. 24. b.

is not reaſonable. Alſo that the preſcription in the diſtreſs not making mention that the cattle of the offender only are diſtrainable, is not reaſonable. Alſo, that the diſtreſs as it appears was taken in the very land of the lord himſelf and others, and not in the land of the offender.

Whitacres, Exor. *againſt* Onſley and another, Exors.

Debt does not lie againſt the executors of the warden for ſuffering one in execution to eſcape from the Fleet, unleſs the warden was convicted in his life-time.

F. Execute. 54.

(25) DEBT by *Whitacres* and others, executors of *Warde* againſt *Onſley* and *Tirril* executors of *R. T.* late warden of the Fleet, and count upon a recovery in debt by the teſtator againſt one *Thurland* in *C. B.* for which he was in execution in the Fleet, whence the teſtator of the defendants, being warden there, ſuffered him to eſcape, the debt not ſatisfied to the plaintiff; whereby an action accrued &c. againſt the ſaid warden in his life-time, and ſince his death againſt his executors. And note, the words of the eſcape which charge the warden, are "that the "aforeſaid *T.* by default of the ſaid warden, eſcaped at "large; the aforeſaid plaintiffs not ſatisfied of the debt "and damages aforeſaid &c." And the defendants demurred upon the count: and the opinion * of the court was, that ſuch action does not lie againſt the executors for the eſcape, unleſs the warden himſelf in his life-time was convicted and adjudged of the eſcape; for the offence is only a treſpaſs by negligence. And ſee the ſtatute of 1 *R.* 2. c. 12. accordingly for ſuch eſcape out of the Fleet: for at the common law no writ of debt lies as it ſeems, but an action on the caſe. And by INGLEBY, 41 *Li. Aſſ.*

* [322. b.]

40 E. 3. Br. Executors 74. 4. H. 5. 2. 34. E. 1. Det. 162. 7. H. 6. 5. Plow. 38. a. Br. Eſcape 28. 1 Ro. Ab. 921. 2 Inſt. 382. 1 Saunders 218. 1 Keb. 116.

(25) Mich. 41. 42. Eliz. C. B. *Per Cur.* If an executor recover againſt B. and have him in execution, and afterwards he eſcape, he may have an action againſt the gaoler in his own name: *ſecus* of an eſcape before judgment. [2 Term. 126] If the ſheriff take A. in execution at the ſuit of B.—B. makes his executors and dies, A. eſcapes; the executor ſhall have debt againſt the ſheriff in the *detinet* only, Sir *Geo. Reynold's* caſe B. R. Mr. *Maſon's* report [& Cro. Jac 545. Hob. pl. 359. & fol. 282.]

Mich. 17. Jac. B. R. in the argument of † *Manlet Moodie's* caſe, it was holden by PEPHAM, ANDERSON, MANWOOD, and WYNDHAM juſtices, that, if A. recover in debt againſt B. and have him in execution, B. eſcapes, A. dies, his executors ſhall have debt upon eſcape againſt the ſheriff. 30. Eliz. B. R. This point was moved, Hil. 3. Car. and the juſtices did not reſolve either way. The caſe was, the ſheriff arreſted B. upon a *latitat* at the ſuit of A. B. eſcaped, whether the executors of A. ſhould have debt upon this? Two juſtices againſt two, Mich. 7. Car. B. R. [W. Jones 248. Cro. Car. 208, 227.] *Beamond* v. *Longe*, and others with him.

[15.] an action for ſuch eſcape does not lie againſt the executors of the warden. And *H.* 10 of the preſent queen [*ante* fol. 271. a. pl. 25.] ſuch an action againſt the heir of the warden does not lie by the opinion of the court.

[2 Bac. Ab. 244. Cro. Car. 549. See 2 Term Rep. 125.]

Eaſter Term,

15. Queen Elizabeth.

Taverner's Caſe.

(26) *JAMES TAVERNER*, being a copyholder to the Lord *Crumwell* of his manor of *Northeltham* in the county of *Nor.* made a cuſtomary in Latin of the ſaid manor on parchment, with eleven labels and ſeals of his own and other tenants of the manor, inſerting therein divers cuſtoms, very falſe, tending openly to the diſheriſon of the lord, and pretending by the title of the ſaid cuſtomary, to be collected, renewed, and ſet forth by the conſent of all the freeholders and copyholders of the manor, being in number 100 at leaſt, and allowed and permitted by the lord of the manor: and in the concluſion, "*in witneſs whereof the eleven* (whoſe names were ſubſcribed), *have put their ſeals the day and year abovesaid.*" But no day or year appeared in the title, and no conſent of all the tenants, or allowance of the lord in fact had. And the ſeals were very ſtrange, for to each ſeal there was a large ſquare ſeal engraven about NORTHELTHAM, and the particular ſeal leſs within that; by which as it ſeems the intent was to prove the affirmance of the lord † *with* the conſent of all the tenants &c. And this was proved in *Taverner* to be done wittingly, ſubtilly, and falſely, and to the intent &c. Whether this be a forgery puniſhable by the ſtatute of the fifth year of the preſent queen

Forging the cuſtomary of a manor which tends to the diſheriſon of the lord, and affixing ſeals to it, is within 5 Eliz. c. 14.

And, in a ſuit for that in the ſtar chamber, the crown may pardon the corporal puniſhment without the party releaſing.

The execution for the double coſts and damages is by Engliſh writ, directed to the ſheriff, of the goods, chattels, and profits of the lands of the offender.

Jenk. cent. 6. c. 23. 8. C. Dy. 321. b. 3 Leon. 108. Mo. 788.

Raſt. forger of falſe deeds.

† Orig. *en.*

Poulton 45. pl. 12. Dy. 302. 3 Inst. 169. [1 H. H. P. C. 684. 1 Hawk. P. C. 341.

[c. 14.] (this act being committed in the ninth year of the present queen) was doubted, and referred by the lords to the consideration of all the judges; whose opinions for the major part were reported by the two CHIEF JUSTICES, that it was a forgery, or falsifying, punishable by the open and shameful penance contained in the statute; which expressly speaks of a *writing sealed*, as this was, and *to the intent* * *to benefit themselves*, and *to disinherit the lord*. And accordingly the judgment and decree was pronounced this term by a solemn presence, the lord keeper &c. being absent by infirmity.

* [323. a.]

Poult. 45. Dy. 304. pl. 51.

(28) And for the execution of double costs and damages recovered by the taxation of the court, it was doubted what manner and form of process should be made: and after a conference thereupon had between all the justices of both benches, and the chief baron, it was resolved, that an *English* writ should be made, and directed to the sheriff of *Nor.* reciting the conviction, and the statute for the livery of the said costs and damages of the goods, chattels, and profits of the lands of *Taverner*, and to bring the money into the star-chamber, the writ to be sealed with the great seal, and the *teste* or witness, *the queen*, as is usual in similar writs in the chancery.

[Now see 4 G. 2. c. 26. § 1. That all writs, process, and returns, thereof must be in Enlish.]

Co. Jur. Court 69. 11 H. 4. 16. a. 9 H. 7. 5. 21 E. 4. 73. Dy. 202, 202, 261. Stamf. 104. b. 2 R. 3. 81. 5 Co. 50.

After this communication and judgment in the star-chamber, the queen pardoned the execution of the corporal punishment. Whether that be good without obtaining the release of the party also? *Quære* the intent of the statute of the fifth year of the now queen c. 14. Note, the preamble strongly penned to encrease the punishment of forgery. Also the body of the act *s.* that the party grieved shall recover double costs and damages, and that the offender shall suffer upon the pillory the corporal penance &c. And also shall forfeit to the queen the profits of his lands, but the plaintiff to be first satisfied &c. Also, if the offender hath once suffered the corporal punishment, he shall not be eftsoons impeached &c. Also, if

(28) Trin. Jac. in the Bench Lord COKE said, that it was resolved by him and POPHAM, [13. Co. 64.] that if costs be assessed in the chancery, or star-chamber, the party upon refusal cannot be fined, or executors charged, but the person only is liable.

Trin. 41. Eliz. POPHAM said, that if a party hath recovered in forgery by false deeds, the king cannot pardon the corporal punishment, as he may where it is prosecuted in the star-chamber.

V. *Biggen's* case, 5 Co. 50. b [Mo. 571. Cro. Eliz. 682. But by 16. Car. 1. c. 10. § 3. the court of star-chamber is taken away.]

the

the offender be convicted, the plaintiff cannot release, or discontinue the punishment &c. but only costs and damages &c. And afterwards 2. in the next *Michaelmas* Term it was holden by WRAY chief justice, SAUNDERS chief baron, HARPER and MANWOOD justices, besides *Bartham*, and *Gerrarde* attorney, that the queen may pardon the corporal penance which trenches to the common example &c. But DYER, SOUTHCOTE, and MOUNSON, *e contra.*

5 Co. 5. b. 20a. 3 Eliz. 202. a. [2 Hawk. P. C. 555.]

Lingen's Case.

(29) *WILLIAM LINGEN* being seised of the manor of *Catton* after the act of 32 *H.* 8. [c. 1.] enfeoffed *A.* and *E.* to the use and intent of performing his last will:—And afterwards by his last will in writing (reciting the said feoffment and the feoffees to stand, and be seised to the said use), declared his very mind and will to be, that his said feoffees and their heirs should stand and be seised thereof to the use of *Jane* his daughter, and of the heirs of her body; which *Jane* was his bastard daughter. *Quære* of this devise. And it was left to the award of JA: DYER and ROGER MANWOOD justices, who made their award in writing, that they took the law to be clear, that this is a good devise of the land, by the intention of the devisor, altho' by no possibility * could the feoffees stand seised to the said use; to which opinion CATLYN and the other justices agreed. And *Brooke* tit. *Devise* 48. reports the opinion of BALDWIN, MONTAGUE, and SHELLEY in 38 *Hen.* 8. that if a man after 32 *H.* 8. wills, that his feoffees shall make an estate in tail to one *A.* it shall be a good devise, according to the intention of the devisor &c.

A. infeoffs B. in trust to perform his will, and by will declares, that B. shall stand seised to the use of his daughter C. This is a good devise of the land by intention, though C. be a bastard; and though B. can by no possibility stand seised to her use. Jenk. cent. 6. c. 28. S. C. [4 Vin. 233. Co. Lit. 3. b. Plow. 523. b. F. Execut. 74. Sty. 302. 1 Leon. 313. Dy. 73. pl. 11. 19. H. 11. Dy. 314. b. 345. a. 5 Co. 358. 27 H. 8. F. B. N. C. 316.

* [323. b.] Gouldsb. 191. Br. Devise 48. 1 Ro. Ab. 611. [See] Dy. 313. Poph. 188. Rast. Wills 2. 3 Bulst. 101. R. 457. Leon. 313. [and see Dy. 96. a. sub fin. pl. 40.]

(30) UPON evidence in *quare impedit* for the vicarage of *T.* in the county of *Worcester*, parcel of the possessions of the college of *Westminster*, it was moved, whether the advowson thereof passed in a lease for years made in the time of *Ed.* 6. in the second year to Sir *T. S.* (who was an admiral, and attainted) by the name of "*all the*

By a lease of *all hereditaments situate, lying, and being in T.* the advowson of the vicarage of *T.* passes. 7 E. 3. 5. Qua. Imp. 19. 16. E. 3. Grants 56. 17. E. 3. 51. F. Grants 57. 5. E. 2. F. Qua. Imp. 165. 33. H. 6. 14. 12

H. 7. 16. 36. H. 6. 16. 19. E. 3. 33. Hob. 304. 5 H. 7. 37. b. 11. 33. H. 6. 3. 34. b. 43. E. 3. 1. b. 20. E. 4. 15. 6. H. 7. 3. b. 26. H. 8. 2. Co. Lit. fo. 332. Bridg. 95. Cro. Car. 74. [1 Com. dig. 283. Shep. Touch. 88. poſt. 351. a. pl. 22.]

" *the hereditaments ſituate, lying, and being in T,*" where the vicarage was. And it was holden by the Court that it paſſed, for it hath ſome being in the town and church of the vicarage, becauſe the view in a writ of *right of advowſon* ſhall be given in the church &c. altho' it does not lie in livery, nor is viſible nor palpable; to which CATLYN and WRAY agreed.

One convicted by ſeveral indictments of hearing ſeveral maſſes, ſhall forfeit but one penalty under 1 El. c. 2. Dy. 303. pl. 74. Raſt. Service and Sacraments 5. Cro. 106. pl. 21. 4 Co. 28.

(31) AT the laſt aſſizes before SAUNDERS chief baron and LOVELESSE ſerjeant at law, one *G.* Eſq. was indicted for hearing three private maſſes on three ſeveral days, by ſeveral indictments: and on thoſe three he was convicted; and whether he ſhall pay or forfeit to the queen 300 marks by the ſtatute of the firſt year of the now queen, c. 2, or but 100 marks for the firſt offence of the three only? And holden by the ſaid three [two] juſtices that only 100 marks, and this by the very words of the ſtatute; conſider the words, " for the firſt offence, and " being thereof lawfully convict &c. ſhall forfeit 100 " marks; and being once convict of any ſuch offence " eftſoones offend &c. 400 marks. And for the ſecond " [third] offence or conviction, all the goods and perpetual " impriſonment."

[See 23 El. c. 1. § 4. 11 & 12 W. 3. c. 4. 18 Geo. 3. c. 60. 31 G. 3. c. 23. & 4. Bl. Com. 55 &c.]

FERMOR's caſe. [Cowp. 612, 640. 2 Black. 906. 1 Term Rep. 249. 2 Term Rep. 712. 3 Term. Rep. 509. 4 Term Rep. 809.]

Alſo ſee *Fermor*, Eſq. was indicted for the hearing of two maſſes, as above; by ſeveral indictments, as above; and in the ſame manner 100 marks only were aſſeſſed by the ſaid juſtices; for which they were blamed by ſome in authority, who ſuppoſed, that the ſtatute gave 200 marks forfeiture; but the opinion of other juſtices did not agree thereto.

Ligeart *againſt* Wiſeham.

The under-marſhal of the King's Bench priſon took a bond from one in execution, *to ſave*

(32) ONE *Will. Wiſeham* being condemned in *B. R.* in debt and for the execution committed to the cuſtody of *T. Gaudy*, marſhal there, and by him immediately

(32) Hil. 20. Jac. Rot. 706. B. R. Sir *George Reynolds* and *Elſworty*. [Lat. 143 & 23. Poph. 165.] Sir *George Reynolds* had *Elſworty* in execution, he being the marſhal; and upon an *habeas corpus* ſuffered *Elſworty* to go into the country, and took a bond from him, that he would be his true priſoner: he afterwards departed from his keeper; which being adjudged an eſcape againſt Sir *George*, Sir *George* ſued on the bond againſt *Elſworty*, who pleaded the ſtatute 23 H. 8. 10. [9.] upon which Sir *George* took iſſue, and it was found for the plaintiff; and

diately delivered over to the cuſtody of *W. Ligeart* under-marſhal, and deputy to him, was impriſoned in the priſon called the *King's Bench*, in *Southwark*: and ſo being in priſon made a bond to the ſaid *W. Ligeart*, by the name of under-marſhal of the *Marſhalſea* &c. in which, as well himſelf as one *G. W.* his brother, was bound jointly and ſeverally, with a condition indorſed, *ſ.* that the ſaid *W.* ſhould remain there and behave himſelf as a true priſoner * as well within the gaol as without, until &c. and diſcharge or ſave harmleſs as well the Duke of *N.* high-marſhal and *T. G.* marſhal, as the ſaid *W. Ligeart*, of all manner of eſcapes, actions, and ſuits thereafter to be had, made, or commenced, for any matter or cauſe touching the priſoner, and pay all duties and fees &c. that then &c. Upon which the priſoner was ſuffered to go at large. After which enlargement the ſaid *Ligeart*, by the name of under-marſhal &c. brought a bill of debt in *C. B.* againſt *G. W.* the brother, being an attorney of *C. B.* declaring on the bond: upon which the defendant, having the bond and condition read to him, pleaded all the matter aforeſaid, alleging alſo the effect of the ſtatute of 23 *H.* 6. [c. 9.] touching bonds to be made to ſheriffs and other officers, and miniſters and keepers or priſons &c. and averred that he for favor, deliverance and enlargement of the priſoner out of priſon, bound himſelf to the plaintiff in the ſaid £. 100, "which ſaid writing "obligatory the ſaid plaintiff by color of his aforeſaid "office took, againſt the form of the ſtatute aforeſaid, "and this &c. wherefore inaſmuch as that writing was "indorſed with ſuch condition in form aforeſaid, as by "the ſtatute ought not to be, he prays judgment *ſi actio.*" But in the commencement he did not ſay *actio non*, but *billa non* &c. and upon this plea the plaintiff demurred in law. (33) And it was well argued at the bar this term by *Meade* and *Jeffreys* for the plaintiff, and by *Loveleſſe* and *Bartham* for the defendant. The queſtions are, whether the marſhal, or under-marſhal be an expreſs officer, or intendable within the ſaid ſtatute, inaſmuch as he is not under any ſheriff, nor is he provided for by the

him harmleſs from eſcapes, and then let his priſoner at large; this is within 23. H. 6. c. 9. and void.

Dy. 118, 119. Plow. 62, 69. a. 2 Keb. 423.

10 Co. 110.

* [324. a.]

Dy. 119. a. 2 Cro. 187.

Raſt. Sheriffs 25.

37 H. 6. 3.

5 Co. 119. Plow. 66. Dy. 357. pl. 46.

1 Keb. 391.

Ple. 68. a. 64. 3 Mar. 119. a. 10 Co. 100. b. Dy. 117. pl. 5. 37 H. 6. 1. 2 H. 4. 9. 3 Cro. 66.

and ſee the judgment Trin. 2. Car. Hil. 17. Jac. Rot. 1276 or 576. B. R. *Shiner* againſt Sir *George Reynold*, [cited Lat. 143.] a priſoner made a bond to Sir *George Reynold* for arreſt money, and adjudged good, and Hil. 19. Jac. Sir *Tho. Periam* and *Read*'s caſe, rot. 1201. [cited 1 Saund. 163. Lat. 143.] this very point adjudged.

ſtatute,

[1 Saund. 262. 3 Term Rep. 118.]

ſtatute, as is the warden of the *Fleet*, and *palace* of *Weſtminſter*. Alſo, whether the bond be void by the common law, becauſe the condition which permits a priſoner condemned, to eſcape, ſeems to be againſt law. Alſo, whether the ſaid ſtatute may be, or hath been taken by equity, being penal to officers. Alſo, whether the averment, which is contrary to the expreſs purport of the condition, be allowable. And the opinion of the Court was againſt the bond: wherefore *Ligeart* perceiving this, would not pray judgment &c. But note that all the printed ſtatutes of 23 *H.* 6. are *que nul vicont ne nul de ces officers ou miniſters ſuiſdit*; but the written ſtatute is *ne nul des officers ou miniſters*, and not *ſes officers* &c.

[Carth. 300, 301.]

Plow. 62. 1. Ro. Abr. 149, 150. 1 Sid. 383. 2 Keb. 423. Dy. 364. 3 Keb. 648.

Leſſee for himſelf and executors, covenants to *repair and ſuſtain*, (*principal timber not hurt through their defaults alone excepted*) By negligence of the executors the houſe is burnt, covenant lies againſt them, but judgment *de bonis teſtatoris* only.

(34) THE leſſee for years covenanted by the indenture for himſelf and his executors, *to repair, ſuſtain, maintain, and amend the houſe*, at his and their proper coſts and charges, from time to time during the term, in all requiſite and neceſſary reparations whatſoever, (*principal timber not hurt or in decay* * *for want of repairs or otherwiſe by default of the leſſee or his executors, only excepted.*) The houſe, by default and negligence of the executors, is burnt. Whether an action of *covenant* lies or not, was demurred &c. And without argument the opinion of the Court was, that the action lies, and chiefly by force of the words *repair and ſuſtain* &c. and the action was brought againſt the executors of the leſſee, and the breach of the covenant alleged by the plaintiffs in the executors, after the death of the teſtator. It was doubted by the Court, whether the judgment ſhould be for damages (which is the principal to be recovered in this action) of the goods and chattels of the teſtator, or *de bonis propriis* of the executors, or *ſi de bonis* &c. *teſtatoris non habent*, then *de bonis propriis* or not: therefore *quære*. But in *Mich.* 15, the judgment was given *de bonis teſtatoris* only.

Dy. 14. pl. 69. Sty. 55. Hob. 188, 283. Pal. 314. Hutton 35. Fulb. parl. lib. 2. fol. 52.

* [324. b.]

[Shep Touch. 169, 174. 1 Hen. Bl. 34]

Dy. 257. 24. H. 6. 23. 33 H. 6. 23. Dy. 185. b. 3 Keb. 189. 2 E. 4. 4. 7 E. 4 9. a. 21. H. 6. 1. M. 3. fol. 127. pl. 11.

Tenant for life levies a fine *cette eve*, to himſelf in fee, afterwards the remainder-man in tail joins him in a feoff-

(35) IN evidence in *ejectione firmæ* the caſe was, that tenant for life, remainder in tail, the tenant for life levied a fine executed to his own uſe in fee, which

(34). 41. Eliz. C. B. rot. 1224. In an action of covenant for not repairing, Mich. 18 Jac. C. B. rot. 1715. or 1157. 5 Co. 31. E. 20. Jac. rot. 125. B. R.

is a forfeiture: afterwards the tenant for life, and he in remainder joined in a feoffment by letter of attorney. *Quære*, whether this feoffment be a diſcontinuance of the entail and of the fee &c. And holden that it was a diſcontinuance; for it was the feoffment of him in remainder, and the confirmation of the tenant for life.

ment; this is a diſcontinuance of the eſtate-tail.
1 Inſt. 251 b. Dy. 148, 235, 339 Co. 6. 15. a. 1 Co. 76. b. Perk. 33. Lit. 123, 142. Br. Feoffments 18. Diſcont. 38. 13 H. 7. 14. b. 3 H. 4. 16. b. 6. Co. 76.

[See the caſes in 2 Bac. Ab. 94. note (i) & Cowp. 702. 1 Term Rep. 738. 1 Hen. Bl. 269.]

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(36) AN iſſue was joined in a real action on the octave of *Michaelmas* laſt, and a *venire facias* awarded on the roll, returnable *octab. Hilar.* but no writ of *venire facias* was made out: and on the octave of *Hilary*, the tenant was eſſoined, and the eſſoin adjourned until the morrow of the *Trinity*; and notwithſtanding this, an entry was made upon the roll, at which "day the parties came here &c. "and the ſheriff did not return the writ, therefore as be- "fore it was commanded the ſheriff that he cauſe to "come &c." And if the jury appear upon this on the morrow of the *Trinity*, the jury ſhall be taken: and this is the common courſe by *Leonard* and the prothonotaries. Note, that there are many precedents of eſſoins of the tenants or their attornies at the next day after iſſue joined in real pleas *s. H.* 4. *H.* 5. *Buck. s.* "*Petrus de F. Attur-* "*natus Jo. W. verſus N. E. et alios de placito terræ unde ju-* "*rat' per Adam G.*" The like *M.* 21 *H.* 6. *Buck.* and *Midd.* twice, and *Trin.* 27. *H.* 6. with an adjournment. *et exigitur jurata, et nullus venit, ideo vicecomes habeat corpora.* And *H.* 4. *H.* 7. *Devon.*' twice: and *M.* 18. *E.* 4. *North:* and *M.* 4. *H.* 8. *Eſſex* of a plea of land *unde exigitur jurata per A. D.*

The tenant eſſoined at the return of the *venire facias* in a real action.
Dy. 223. pl. 27.
[Booth's real act. 15. 63.]
Co. Mag. Chart. 417. 126. 127.
[2 Term Rep. 16.]

40 E. 3. 34. 7 H. 6. 14. 9 H. 5. 12. 34 H. 6. 16. Dy. 224. 233. pl. 2.

Lord Audley's Caſe.

(37) THIS term the old caſe of the land of Lord *Audley*, who was attainted in the time of *H.* 7. and which was moved *Eaſt.* 1, of the now queen, * was again brought in queſtion, becauſe the opinion of the *Queen's Bench*, laſt term, was contrary to the former reſolutions and orders; for which reaſon a meeting of all the juſtices of both benches, the chief baron, and the queen's counſel, was

(This caſe abridged ſupra 166. a. pl. 8. which ſee.]
2 Leon. 159. 4 Leon. 166. Dy. 314. pl. 97. [Jenk. c. 5. p. 62.] } S. C.
[But ſee Dal. 88. pl. 3. S. C. with a contrary determination.]

Dy. 323. a.

was at *Serjeants Inn*, in *Fleet-ſtreet*, where the caſe was debated. And by the opinion of GERRARDE attorney, SAUNDERS chief baron, and the four juſtices of *C. B.* *s.* MOUNSON, MANWOOD, HARPER, and DYER, the firſt reſolutions in the firſt year of the preſent queen, *s.* that this cannot be intended, or conſtrued to be a laſt will, but a purpoſe and intent only, was confirmed. But BROMELEY ſolicitor-general, who was of counſel in the matter, thought the contrary, and adhered to the opinion of the juſtices of *B. R.* who intend to have the caſe more debated in that court &c. And there is a great diverſity where the things are executory by the feoffees, during the life of the deviſor, and where after his deceaſe, as it is in the caſe above. And *H.* 11. *H.* 4. [52. b. pl. 30.] in petition, where *ceſtuy que uſe* declared his will, that his feoffee ſhould make an eſtate in fee to his ſon (without limiting any time when), and notwithſtanding this he himſelf took the profits. And afterwards he committed treaſon, of which he is attainted; and by parliament all his lands, as well in uſe as in poſſeſſion, are forfeited: by this the land above was forfeited, by the opinion of the juſtices; therefore the uſe was not changed, nor was it a laſt will. But *Mich.* 31 *H.* 6. *tit. ſubpœna* [in *Fitz. Ab.* pl. 23.] *ceſtuy que uſe* declared his will to his feoffee, that his daughter *A.* ſhould have the land after his deceaſe; and afterwards *A.* diſpleaſed her father by diſobedience, which he declared to his feoffee, and revoked his ſaid will: and by the opinion he may well do it in conſcience; for no conſideration of a *quid pro quo* was in the firſt will for a preſent change of the uſe &c. and being a will and teſtament that was revocable. But ſee an addition to the principal caſe above, to enforce the opinion, againſt the former reſolutions *H.* 18. of the now queen, fol. 348.

11. H. 4. 205.

1 Co. 110.

19. H. 8. 11. 9. E. 4. 8. a Perk. 99. B. N. C. 156. Dy. 49. pl. 12.

Trinity

Trinity Term, [325. a.]

15. Queen Elizabeth.

Say's Caſe.

(38) SIR *WILLIAM SAY*, Knt. had iſſue two daughters only, the eldeſt married to Lord *Mountjoy*, the other to Lord *Bourchier*, late Earl of *Eſſex*: theſe two daughters had iſſue two daughters, *Gertrude* late Marchioneſs of *Exeter*, and *Anne* late Marchioneſs of * *Northampton*. Sir *William Say*, in the time of *H.* 7. gave the manor of *Wikeham-Hall* to his ſaid eldeſt daughter in tail general, remainder to his own right heirs; and ſo died, ſeiſed of the reverſion or remainder, which deſcended to both his ſaid daughters; the eldeſt died, ſeiſed of the eſtate tail in poſſeſſion; and in the moiety of the ſaid remainder or reverſion expectant *Gertrude* her daughter entered, and was attainted of treaſon by parliament 31. *H. S.* and all her lands and tenements of any eſtate of inheritance forfeited to the king and his heirs, ſaving to all ſtrangers their rights, titles, reverſions, remainders &c. as if the act had never been made, but no word of *entries ſaved*, nor are there any words in the act to veſt any actual poſſeſſion in the king without office. And after that the king by his letters patent in his thirty-fifth year gave and granted the ſaid manor to Lord *Morley* in fee, who entered; *Gertrude* died without iſſue, ſo that the entail is extinct. The other ſiſter entered upon the patentee, claiming her moiety as heir to her grandfather. Whether ſhe might enter, or whether ſhe ſhall be put to her *petition* or *monſtrans de droit*, *quære*. Note, That the ſtatutes of 33, and 34 & 35. *H.* 8. [20, & 21.] for confirmation of patents (notwithſtanding no inquiſition or office to entitle the king be found,) ſhall not hinder the entry; for the act is, *the patent ſhall be good againſt the king and his heirs only*. And afterwards judgment was given without any argument at the bar or bench, that the entry was lawful, and no *petition*, or *monſtrans de droit* is neceſſary, becauſe the king was never ſeiſed &c.

A. and B. are copartceners; A. is attainted of treaſon, the king grants the land without office to another; yet B. may enter upon the patentee for her moiety without *petition*, or *monſtrans de droit*

1 Co 42. 3. 10. 10. 21. H 8. Br. 90. Plow. 486. 2 Inſt. 22 b.

[325. b.]

17 El. 343. a. Co. 42. a. 320.

Dy. 101. a. 326. a.

28. H. 8. Br. Office 17. Plow. 483.

1. Co. 47. 4. Co. 86. 3. Cro. 10. 1 Cro 173. [4. em. dig. 453. 458. Skin. 608.]

Cateſby *againſt* Baudes and Wife;
AND
Bowldes *againſt* Newport and Wife.

Eſtrepement lies between judgment and execution in *quid juris clamat*.
[10. Vin. Ab. 499.]
14. H. 7. 7 b 48 E. 3. 18 b. 16. F. Nat. 60. b. 61. a. Eſtrepement 13. Br. 10. 2. Inſt. 328, 329.

[3. Bl. Com. 226.]

(39) A Writ of *eſtrepement* was prayed by *Cateſby* againſt *Baudes* and wife, after judgment in *quid juris clamat*, and before execution, and it was granted. See *M.* ↑ 30. *H.* 8. A writ of *eſtrepement* was granted by all the juſtices of the bench for *Bowldes* againſt *Newport* and his wife in *quid juris clamat* of tenements in *Wallington*, and *Clothall*, in the county of *Hertford*; *ex Lib.* BILL. See *T.* 4. *E.* 3. [32. a. pl. 14.] for the 1ſt point s. between judgment and execution.

In aſſiſe for two acres, pleas to each ſeverally; the plaintiff makes ſeveral titles, and joins iſſue by *veniat aſſiſa ſuper titulo*, in the ſingular number; this is well enough, and ſhall be referred to each.
Fitz. Nat. 60. 5. Co. 35. 3. Cro 427. 5. H. 7. 29. b. 32. E. 3. Aſſ. 99. Dy. 149. 153. 204. b. 260 321. a. 1. Inſt. 345. b. 1. Sid. 39. 1. Keb. 43. [Cro. Eliz. 139.]

(40) *SAUNDERS* chief baron aſked this queſtion; in aſſiſe the plaint is of two acres of land, the tenant pleads two ſeveral bars for the two acres ſpecially, and the plaintiff makes two ſeveral titles at large s. for each acre one; to which the tenant pleads, "let the aſſiſe come upon the title," s. *veniat aſſiſa ſuper titulo* in the ſingular number. And the aſſiſe finds one title for the plaintiff, and the other for the tenant, and againſt the plaintiff. Whether the plaintiff ſhall recover for the acre, and title which is found for him, *quære*. And as it ſeemed to DYER, CATLYN, and to himſelf, the plaintiff ſhall recover * for the one, and ſhall be barred for the other. And ſo was the judgment given afterwards, as SAUNDERS, reported, againſt the opinion of MARIOT.

* [326. a.]

Michaelmas Term, [326. a.]

15 & 16 Queen Elizabeth.

Huntley's Caſe.

(1) ONE *Huntley* by his laſt will deviſed a tenement in *St. Nicholas'* fleſh-ſhambles, now in the pariſh of *Chriſt-Church*, *London*, "*to a woman and her brother, and to the* "*heirs of every of their bodies lawfully begotten*; and for default "of ſuch iſſue of the bodies of the ſaid woman and her "brother (by name) lawfully to be begotten, remainder "to the right heirs of the deviſor himſelf."—The brother died without iſſue, the ſiſter had iſſue, and died. Whether the entire tenement ſhall deſcend to the iſſue or only the moiety; and whether the other moiety ſhall be in the right heir of the deviſor, as a reverſion, or as a remainder, was demurred in debt; which demurrer was not diſputed, by reaſon of the death of one of the parties pending the plea: but in the next *Hilary Term* the plea was revived. And it appeared that *Huntley* was ſeiſed, as well of the aforeſaid tenement as of a tenement in the pariſh of *Saint Michael* at *Queenhythe*, *London*; and by his ſaid will deviſed both to his wife for the term of her life, remainder as above by theſe words in *Engliſh*, "I will "and bequeath all and ſingular my tenements with the "appurtenances, ſet, lying, and being in the pariſh of "*Saint Michael* at *Queenhythe*, and *Saint Nicholas'* fleſh-"ſhambles of *L.* to *Jane* my wife, for term of her life, "and after her deceaſe, I give and bequeath the ſaid te-"nement in *St. Nicholas'* fleſh-ſhambles aforeſaid, unto "&c." as above; which *St. N. F.* was a pariſh by itſelf not long before, and united and made parcel of *Chriſt-Church* pariſh; but that was not ſhewn in the count, nor any averment made by the plaintiff, that *St. N. F.* was within the pariſh of *Chriſt-Church*; for which cauſe, and

A. leaſed for years, and then deviſed the land *to B. and his ſiſters, and to the heirs of every of their bodies*; they have ſeveral inheritances; and the ſiſter dying leaving iſſue, on the death of B. without, the rent ſhall be apportioned to the iſſue. [1. And 21. Bendl. 226. S. C.] 2 Cro. 656. 1. Keb. 573. Hob. 33 7. E. 6. B. 431. Lit 296. 283. 4. 14. Eliz. 303. b. 8. Aſſ. 33. 7 Eliz. 337. b 35. H. 8. 55. Dy 93, 199. Co. Lit. 25. b. Dy. 130. b. 304. 50. 325.

Plow. 191.

Hob. 47.

(1) 33. *Eliz.* but entered in *Hil.* 28. *El.* rot. 1742. *Hil.* 39. *Eliz.* rot. 333. *Collings* v. *Harding*. [*Cro. Eliz.* 606. 13 *Co.* 57. & *Mo.* 544] A man ſeiſed of two acres, the one in fee, guildable, the other in copy, by licenſe leaſed his copy and fee land, and the tenant attorned; afterwards he ſurrenders the reverſion of the other acre to the ſaid grantee, who was admitted; he brought debt for the rent, and adjudged maintainable.

for the matter above, the defendant demurred in law upon the count, in an action of debt for the moiety of the rent reſerved upon a leaſe for years made by the deviſor before the deviſe &c. And in next term judgment was for the plaintiff *s.* for the moiety of the rent for two years and a quarter; for the plaintiff in his count, expreſsly alleged the tenements to be in the pariſh of *C.* and that the tenements aforeſaid by theſe words following in *Engliſh* (as above,) he gave and * deviſed, as above, which, do not ſpeak of the pariſhes of *St. M.* and *St. N.* but pariſhes only, ſo ſufficient without any averment. But it would have been more clear, if it had been ſhewn that *St. N.* ſhambles had been in the pariſh of *C.*

[See Vin. Ab. Deviſe (Ed.) and the books cited in the margin ante 304. 2. pl. 50.]

Ante 263.

* [326. b.]

Note, Reverſion and rent apportioned by deviſe; and ſo it was adjudged that it may be. *Mich.* 40. 41. *El. B. R.* between *Ardes* and *Watkins*, [Cro. Eliz. 637. 651. Mo. 549.]

Eaſt. 2 *Jac. Cro.* ſaid, that if there be a deviſe to two brothers in tail, and if they die, to the daughters; if one die without iſſue, the other ſhall have his part; and that it ſhall be croſs-remainders, becauſe the one is heir to the other. The court *contra*, becauſe an eſtate ſhall not be taken by implication, where there is an expreſs eſtate.] *Vide ante* 304. a. pl. 50. and the books in margin there.

The ſea leaves a great quantity of land upon the ſhore; whether the king, or the owner of the adjoining ſoil ſhall have it—*qu.*

[See Vin. Prerogative (B. a.) throughout.]

Sir John Davies 16. 9. b. 56. a. 80. 81. 2. Rol. Ab. 169. 170. 5. Co. 107. a. Bracton 9.

1. Keb. 301.

(2) THE ſalt water of the ſea relinquiſhed a great quantity of land upon the ſhore; whether the prince ſhall have this land by his prerogative, or the next adjoining owner ſhall have it as a perquiſite, *quære*; for the argument of which, ſee the *Inſtitutes*, *libro ſecundo*, *de rerum diviſione*, & *Juſtinian* [*Lib.* 2. *Tit.* 1.] *de acquirendo rerum dominio pro inſulâ*, *littore et ripâ*. *Britton*, in the chapter of purchaſe, [*c.* 33.] *Bracton*, *c.* 2. & 12. & 24. *li.* 2. *de acquirendo rerum dominio.* And the ſtat. of 18. *E.* 3. [ſtat. 2. c. 3.] for the king's licenſe to all merchants to traffic upon the ſea, and 22. *Li. Aſſ. ca.* 93. *Et de alluvione, accreſcentiâ et inundatione maris ſeu fluminis ſubito et extraordinarie per vehementes tempeſtates, & quando per naturales et ordinarios fluxus maximos*, viz. (ſpring-tides,) *qui fiunt bis quolibet menſe*, *differentia magna eſt*, for gaining of land by ſurrounding

(3) The prince ſhall have all lands left by or gained from the ſea. I have ſeen and peruſed a treatiſe thereon, and therein many examples of *Romney Marſh* and *Broombill* in *Kent*; of which there are farmers to the king. And there is vouched a *memorandum* they came to an agreement with the lord the king. *Trin.* 43. *E.* 3. *rot.* 13. *ex parte* of the Treaſurer's remembrancer. If the ſea-marks are gone, ſo that it cannot be known if ever there was land there, the land gained from the ſea belongs to the king. But if the ſea cover the land at flux of the ſea, and retreat at the reflux, ſo that the ſea-marks are known, if ſuch land be gained from the ſea, it belongs to the owner; adjudged 8 *Eliz.* ℔ Corporation of *Rumney*'s caſe. [4 Bac. Ab. 153. 4 Com. dig. 452. 2 Bl. Com. 261, 262.]

or

or overflowing of the banks when the metes and certain limits by trees and bounds are utterly defaced by the ſea. See 43 *E.* 3. *Norf.* of a certain proceſs of the Exchequer made againſt the Abbot of *Ramſay*, to ſhew wherefore 60 acres of marſh ſhould not be ſeiſed into the king's hands, which the Abbot hath appropriated to himſelf and his houſe, without the king's licenſe, upon a certain preſentation, by virtue of a certain general commiſſion, concerning the lands concealed and detained from the king; the abbot anſwers, that he holds the manor of *Brouncefter*, which is ſituated near the ſea, and that there is there a certain marſh which ſometimes is leſſened by the influx of the ſea; and ſometimes by the efflux of the ſea is enlarged; without this, that he hath appropriated to himſelf &c. as by the preſentation aforeſaid is ſuppoſed &c. And the attorney for the king maintains the preſentment, and prays that this may be enquired of by the country: and the abbot prays the like. And by *niſi prius* before ALMAR. DE SHIRLAND, one of the barons of the exchequer in the 45th year of *Ed.* 3. it was found againſt the king, and the title aforeſaid for the abbot; therefore the abbot went thereof without day, ſaving always to the king his right, if any, &c. This is found in the regiſter of *Ramſay*, in the keeping of *H. C.* knight, and agrees with the record, which † I have ſeen. And *Eliz. E.* 17. of the now queen, in a like caſe in the exchequer, about *Sandwich*, the verdict was ſolemnly given for *Hamond* againſt the queen, *Digges* informing for the queen.

Rot. 13. 12. Co. 120.

Davies 56. b.

DIGGES v. HAMOND.

[† So all editions ſubſequent to that of 1592; but that has only a *quod vide*.]

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(3) THE chaſe of *Waddon* is the inheritance of the crown, and the Lord *Gray* lieutenant thereof in fee; and he, and his anceſtors &c. and their keepers, by preſcription, have uſed to hunt therein, * as well by night as by day, the hinds wandering in the manor of one *Forteſcue* of *S.* adjoining to the ſaid chaſe, as in the purlieus of the chaſe; but ſeparated by a hedge and ditch. And *Forteſcue* had by the queen's grant, as well the ſaid manor as the free warren in the demeſne lands thereof, as well by her own grant as by confirmation of ancient former charters,

The king is ſeiſed of a chaſe; and A. being lieutenant thereof in fee, preſcribes to hunt ſtray deer into the manor of S. as a purlieu; the manor comes to the king, who grants it to B. *ita quod* none ſhall enter without the leave of B. This unity of poſſeſſion and grant does not deſtroy the preſcriptive right of A.

* [327. a.]

with

with the words, "*ſo that none ſhall enter into that warren to "chaſe, without the licenſe and will of F.*" The keepers of the Lord *Gray*, in *Auguſt* laſt, were diſturbed and beaten for uſing that liberty in hunting in the ſaid demeſnes; with great violence and hurt done by the ſervants of *F.* (for which they were indicted) and by the command of their maſter. Since which time a ſervant of the Lord *Gray*, being in the company of the keeper, and wounded in the ſame affray, is dead of the ſtrokes &c. This matter being firſt heard before the council, was committed for examination of the law points to the two chief juſtices, and the attorney-general; who having heard the parties, and their counſel, thought the law to be, that the preſcription being proved true (which *F.* denied), notwithſtanding the unity of poſſeſſion of the chaſe, and manor of *S.* in the queen, and notwithſtanding the grant of the queen herſelf, and her confirmation of the warren with the general words of prohibition aforeſaid, which extend only to the ſubject, the liberty of the purlieu remains unextinguiſhed; and then the killing above is not juſtifiable by the ſtat. *de Malefactoribus in Parcis, foreſtis, et Warrennis* &c. [21 *E.* 3. ſt. 2.]

Dy. 348. b.

4 Inſt. 99.

43. E. 3. 22. b. 11. H. 7. 25. 11. H. 4. 5. 13. H. 6. 31. 30. H. 8. 43. Davies 5. b. Dy. 295. 3 Bulſt. 339.

[But ſee 4 Inſt. 303. Wood Inſt. 202]

[1 H. H. P. C. 491. 5. Com. dig. 520. Poph. 167.]

If one having two benefices by diſpenſation obtain a third, the firſt is void, and the profits of the third forfeited; but the ſecond remains—*ſed qu.*

(4) THE chaplain of a biſhop beneficed with a benefice with cure, above the value of £. 8 *per annum*, and of the gift and patronage of the queen, obtained a plurality, and thereby took another benefice of like value, and after that, by a trialty, obtained a third like benefice, and enjoyed all three for two years and more. The queen ſuppoſing the firſt to be void by the taking of the third, preſented a clerk to the ordinary by the title of Lapſe. The preſentee obtained letters of admiſſion, inſtitution, and a mandate to the archdeacon, (but yet kept by the ordinary, not delivered nor executed); upon which a *quare impedit* is ſued by the queen againſt the ordinary and the firſt incumbent; pending which ſuit, the queen preſented another clerk, but before the notifying of that to the ordinary, the firſt preſentee is admitted, inſtituted, and inducted. After which, the queen recovered againſt the ordinary and incumbent, on the plea of *ne diſturba pas* and a *nihil dicit*, and had a writ to the biſhop

2 Rol. Ab. 353. 4. 12. Eliz. 292. a.

ſhop at the ſuit of the ſecond preſentee; and thereupon the firſt preſentee ſued a *ſuperſedeas* thereof for the queen. (5) The firſt queſtion * ariſeth upon the ſtatute of 21 *H.* 8. c. 13. touching pluralities of benefices with cure *s.* whether the firſt of the three benefices is void? and alſo whether the forfeiture of £. 20, and the profits of the third benefice is incurred by the incumbent or not, and the ſecond only to remain? And divers juſtices and ſerjeants held an opinion that way; yet *quære* whether the intendment of the law was ſo? See the proviſo for graduates of the univerſities thereof, in which is a "ſo that &c." (6) The ſecond queſtion was, whether the falſe ſuppoſal of the preſentation of the queen (that the benefice was void, and the title by lapſe devolved to her, where it was not ſo), made the preſentation void or not? Alſo, whether the ſecond preſentation be not in law a ſufficient revocation of the firſt, the firſt not being executed by induction, without any words of repeal in it, or recital of the former grant or patent according to the ſtatute 6 *H.* 8. c. 9. [c. 15.] And whether the ſecond preſentation ought to be notified to the ordinary or not? But the caſe in truth now appears that the Biſhop of *Norwich* hath the nomination, and her majeſty only the preſentation or recommendation over to the ſaid biſhop, being ordinary;—— therefore *quære* well upon the plea of the biſhop above of *ne diſturba pas* &c.

Raſt. reſidence 2.

]Wats. Cl. L. 12, 13. Godb 153. 3 Mod. Ent. 105. and fol. 352. pl. 25. poſt.]

6. Co. 22. b. 47. E 3. 4. 17. Eliz. 339. b. Dy. 192. a. 2 Ro Abr. 353. 190. 354. Dy. 292. 70 339. b.

[Wats. Cl. L. 233, 224, 225. 3. Mod. Ent. 84, 85, 86. 1 Leon. 156.]

Raſt. Patents 11. Br. Qua. Imp 133.

32. H. 8. 48. a. Mo. 895.

The Archbiſhop of York and Willock's Caſe.

(7) THE church of *Haughton juxta Newarke* became void by the death of the incumbent; and *M.* the patron preſented his clerk to the Archbiſhop of *York*, who is ordinary of the place; and he, upon examination made at *York*, found him unqualified by literature, and therefore refuſed him; and notified this to the patron by public intimation fixed on the doors of the church of *H.* And the

If a church be void by death and the ordinary refuſe the preſentee of the patron for illiterateneſs, lapſe is to be reckoned from the day of the death, and not of the notice. *Secus*, if void by reſignation or deprivation. But notice affixed to the church-

(7) *Mich. 5. E. 1. rot.* 100. *C. B. Queen Eleanor* v. the *Biſhop of Lincoln*, [Godolph. Rep. Can. 248. *c.* 22. § 6.] before the king adjudged that the ſix months time ought to continue for half of the year, and ſhould be computed by months of the year, and not by weeks, and that that time ought to be computed from the time of the death or ceſſion of the parſon, and by reaſonable days journeys, by which notice may come to the patron, conſideration being paid to the diſtance of the place. See the book of *Record*, fol. 41. [See 6. Co. 61. b. & poſt. 345. a. fol. 5.]

fix

doors is not ſufficient, unleſs the patron reſide in another county, and cannot readily be found. If the Archbiſhop of Y. as ordinary, refuſe for illiterateneſs which may be traverſed, it ſhall be tried by the Archbiſhop of C. And the writ *de admittendo* (if it ſhall for the patron) ſhall be directed to him. [3 Leon. 45. 8. C.]

5 Co. 58.

18 Eliz 346. b. 6 Co. 29. b. 2 Ro 589, 583, 364.

[Wats. Cl. L. 234, 235.]

ſix months paſſed, no new preſentation being made; wherefore the ordinary made collation on account of lapſe to *Willocke*; upon which *M.* brought *quare impedit* againſt the ordinary and his clerk. *Quære* whether the ſix months ſhall be reckoned from the time of the death, or from the time of notice given? &c. Alſo, if iſſue be joined upon the notice, *quære* whether ſuch manner of notice can maintain the iſſue? And if iſſue be joined upon the ability or inability, *quære* whether it ſhall be tried by the Archbiſhop of *C.* who is primate of all *England* and metropolitan, or by the Archbiſhop of *Y.* the ordinary of the place, and primate of *England* and metropolitan in his dioceſe, or by the country? But this ought not to be by the country unleſs the preſentee be dead before the ſecond examination by *H.* 39 *E.* 3. [1. b. 2, a.] and *E.* 40. *E.* 3. [25. b. pl. 32.] And by the opinion of the juſtices, the ſix months in the principal caſe above ſhall be reckoned from the time of the death &c. otherwiſe it ſhall be of a vacancy by reſignation or deprivation; for then it ſhould be from the time of notice &c. 1. *H.* 7. in the term of *E.* [*H.* fol. 9. b. pl. 8.] *Rot.* 279. And by *niſi prius* in next *Lent*, the iſſue, (that the ordinary did not give notice * to the patron within ſix months next after the death of the laſt incumbent &c.) was found for the patron; and the truth of the caſe was, that the ordinary had refuſed a clerk preſented by *M.* before, and gave notice thereof by letters to *M.* himſelf in perſon, who lived then, and after, and before, in the ſame county of *N.* where he might have well been certified of the ſecond refuſal without ſuch general inſtrument of intimation, which is the dernier reſort when the patron cannot perſonally be found in the ſame county, as ſome think: and afterwards judgment was given againſt the archbiſhop and his clerk to be removed; and a writ to admit a fit perſon to the church aforeſaid was directed to the Archbiſhop of *C.* primate of all *England* and metropolitan, and not to the Dean and Chapter of *Y.* *quaſi ſede vacante*; becauſe the Archbiſhop of *Y.* was himſelf a party and found the impeditor; and by that writ *Louth*, clerk, was admitted and allowed as a fit perſon by the metropolitan of *Canterbury*, notwithſtanding the refuſal aforeſaid: and this, *per Curiam*, notwithſtanding the opinion

5 Co. 58. 22. H. 6. 26. 30. 9 E. 3. 2. B. Tryal 8. B. Quare Imp. 16 117. 18. H. 7. Cro 49, 50, 88. 14. H. 7. 21. a. 13. El. 293. b.

[See 3 Com. dig. 200, 204 Wats Cler. L. 216 217, 113. 3 Mod. Ent 122.]

5 E. 4. 3. b. 4 Co. 79.

* [328. a.]

2 Ro. Ab. 365, 390, 582.

[Cro. El. 119. 1. Leon. 32.]

Dy. 346. F. Nat. 38. b.

31 H. 6. 10. a Dy. 194. 353. pl. 30. 7. El. 241. b. Co. 5. 58. b 5. H. 7. 22. a. 7. H. 4. 37.

opinion of Dr. *Yale* &c. *quære* if it ſhould not be ſo done if the Archbiſhop of *C.* was to offend in like manner in his province *e contra*? Dy. 231.

Mountford *againſt* Cateſby.

(8) ACTION upon the caſe was brought by *Mountford* againſt *Cateſby*; and the writ and count were, that the defendant, in conſideration of a ſum of money and a horſe, made a leaſe to the plaintiff for a term of years, and undertook &c. that the ſaid plaintiff, peaceable and quietly, ſhould have and enjoy &c. during the term *without eviction and interruption of any perſon*, &c. and ſhewed that the father of the defendant had entered upon him, and ſo had interrupted him &c. And the defendant pleaded that he did not undertake in manner and form &c. and found for the plaintiff, and damages aſſeſſed &c. And in arreſt of judgment it was ſaid by MEADE, that the entry of the father of the defendant may be intended to be made by tort; which the plaintiff hath remedy to puniſh by treſpaſs, as upon a leaſe with warranty &c. that extends not but to thoſe who have a legal title of entry &c. But it was not allowed; for it is an expreſs aſſumption and undertaking in fact, that the plaintiff ſhall not be interrupted or moleſted in his poſſeſſion, but ſhall quietly enjoy his poſſeſſion, which ſhall be intended to be the chief cauſe of this contract: wherefore the plaintiff ſhall have judgment to recover.

The leſſor undertakes to his leſſee, that he ſhall enjoy *without the interruption of any perſon.* If a ſtranger tortiouſly enter, an action lies on this ſpecial aſſumpſit. [3 Leon. 43. Bro. Ent. 16. S. Cc] 3 Leon. 83. 1 Ro. Ab. 430. Dy. 230 pl. 56. Owen. Vaugh. 120. 1. Cro. 5, 6 Mod. Rep. 101. 2. Bulſt. 95. 13. Jac. Cro. 383, 425. Co. 4, 8. 1 Car. Cro. fo. 6. 2 H. 4. 9. b. Lit. 15. 7. F. Nat. 145 26. H. 8. 3. b 22. H. 6. 52. b. 42 b. 2. E. 4. 15 F. Covenant 6, 8, 26. Hob. 35. Co. Lit. fo. 384. a. See 733. 32. H. 6. 32. 20. H. 8. 3. Dy. 30. 43. Hob. 35. Godb 48. 3. Keb 216, 755. [Shep. Touch. 163. 1. Hen. Bl. 36. 3 Term Rep. 584. 4 Term Rep. 6 7. 1 Term Rep. 671. Dougl. 43. Powel on Contracts 379.

(8) *Mich.* 26. 27. *El C. B.* The condition of a bond was, "that if the obligee enjoy, &c. "according to the indenture, without let or interruption of any man:" and agreed by all the juſtices, that if he be ouſted by one who hath no right, the bond is not forfeited; for it ſhall be intended of lawful lets and interruptions. And the ſame is the law by PERIAM, if "according to the indenture" had been ommitted.

A leaſe for years and the leſſor covenants that the leſſee "might or ſhould peaceably, quietly, "and lawfully have, hold, and enjoy the premiſes without interruption of him, or any other "perſon." In debt brought on a bond to perform theſe covenants, the plaintiff aſſigned a breach *i.* the entry of a ſtranger who had no right: and the opinion of COKE, and the court clearly for the plaintiff. *Trin.* 4. *Jac. C. B.* [4. Term Rep. 620]

Hunt's Caſe.

(9) ONE *H.* receiver-general of the revenues of the crown in the counties of *Warwick*, *Leiceſter*, and the city of *Coventry*, being impleaded in the *Bench*, came

Writ of privilege out of the Exchequer not allowed to the receiver-general of the revenues of the crown ſued in C. B.

at

[Vin. Ab. Court of Exchequer (P.)]

at the exigent, and brought a writ of privilege out of the exchequer in theſe words, "The queen &c. to our be-
"loved and faithful *J. D.* Knt. our Chief Juſtice of *C. B.*
"and others his companions our Juſtices there greeting,
"amongſt thoſe things which adorn the royal dignity that
"ancient cuſtom uſed in our time, and the times of our
[328. b.] "predeceſſors ſo requireth of us, that from every * of our
"debtors our debts are to be levied and paid out of their
"goods, before that they ſatisfy their other creditors; and
"now it is given us to underſtand that *I. H.* gent. and *M.*
"his wife, *Edmund Hunt* gentleman, our receiver-general
"of the revenues of our crown in the counties of *Warwick*,
"*Leiceſter*, and the city of *Coventry*, before you, by the name
"of *E. H.* late of *London* otherwiſe called *E. H.* of *Lon-*
"*don*, gent. do implead, whereby the ſaid *E. H.* is the leſs
"able to ſatisfy us of the revenues aforeſaid, as it is ſaid
"to our damage, and the manifeſt hindrance of the pay-
"ment of the revenues aforeſaid. And we willing our ſaid
"prerogative to preſerve inviolate, and before the other
"creditors of the ſaid *E.* and of all others whomſoever to
"be ſatisfied, as is juſt, do command you, that neither the
"plea aforeſaid, or any other plea againſt the aforeſaid *E.*
"*H.* at the ſuit of any other ye do entertain againſt the
"dignity and cuſtom aforeſaid; but that ye do wholly
"ſuperſede the plea aforeſaid, and all other pleas moved or
"to be moved before you againſt the ſaid *E. H.* admoniſh-
"ing the aforeſaid plaintiffs that they may ſue againſt the
"aforeſaid *E. H.* in our exchequer, if they ſhall ſee ex-
"pedient. Witneſs S. SAUNDERS, knight, at *Weſtminſter*,
"on the 10th day of *June*, in the fifteenth year of our
"reign."—By the red book of the Exchequer, *fol.* XXXVJ.
as to the prerogative aforeſaid, and by the baron *Fanſhawe*.
But this writ was not allowed there *(a)*.

* Ro. Ab. 159. 3 Leon. 223. Dy. 34. pl 19. Rol. Contin. 195. Ben. 118.

Dy. 33. 287.
2 Inſt. 551.
Br. Privilege 25. 9. E. 4. laſt caſe ruled accord'

See Inſt. 131. b. b.
[2 Com. dig. 592.]

(a) In the old copy in the *Middle Temple* library, there is this addition in MS. "*Car*
"*duyſſoit eſtre ſue hors del canc. comprenant tiel*
"*matter come* 41. *E.* 3. *Fitz. Execution* 38.
"*et* 10. *Eliz.* 275. *a.* [*ante.*]
"*Inter fora judicialia nulla poteſt eſſe com-*
"*municatio niſi intervenient Cancellario v.*
"*Manuſcrpt de Cancellar.*"

TENANT

(10) TENANT for term of *auter vie* made a leaſe by indenture for a term of years, rendering a rent to him and to his executors and aſſigns. The leſſor died within the term, the leſſee continued in the occupation, and *ceſtuy que vie* is yet living. *Quære* whether the termor ſhall be adjudged occupant, or tenant by ſufferance, paying the rent to the executors of his leſſor? and if he will not do that, what remedy at law for the executors. And whether the freehold ſhall be adjudged in him who hath the reverſion of the fee &c. But by *Whiddon* the caſe is better for the leſſee for years than above; for the leaſe in the beginning was made to the firſt tenant *habendum* to him, and his executors and aſſigns for the term of *auter vie* &c. and livery of ſeiſin was made accordingly, as it ought. See *M.* 38. *H.* 6. 4. [28. b.]

Leaſe to A. his executors and aſſigns for the life of B and livery accordingly. A. leaſes to C. for years, rendering rent, and dies, B. living, whether C. ſhall hold as occupant?

3 Leon. 35. [ſeems S. C.] Dy. 321. pl. 22. 2. Rol. Ab. 151 B.N.C. 91. 2 Keb. 251. R. 55. 3 Keb. 498. 1 Co 104. 9. H. 6. 43. 32 E. 3. det. 9. Lit. 168. 2 Cro. 200. 5 Co. 13. a.

[See Co. Lit. 41. b. and Mr. Hargrave's notes. Shep. Touch. 104. and note (3) there. 4 Term Rep. 229. 3 Com. dig. 246.]

(10) *Eaſt.* 31. *El. C. B.* [Cro Eliz. 182.] by PERIAM and ANDERSON, that if leſſee *pur auter vie* make a leaſe for years to commence after his death, that prevents the occupancy.

If leſſee *per auter vie* make a leaſe for years rendering rent, and the leſſee for years make a leaſe at will, and leſſee *per auter vie* die, now the leſſee at will is occupant, and ſhall have the rent of the leſſee for years as incidental to his reverſion; and the entry of the leſſee for years is lawful. *M.* 10. *Jac.* this caſe was adjudged. [2 Bulſt. 11.]

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(11) A TERMOR deviſed his term to his ſon (being of the age of eighteen years) when he comes to his full age, and in the mean time he willed that his wife ſhould have the occupation and profits thereof; and afterwards made his wife his executrix, and died. The wife proved the will, and entered, and afterwards aliened the whole term. And afterwards the ſon came to his full age. *Quære* what remedy he hath for his term? for the judges differed in opinion. [*Vide ante* fol.] 74. pl. 18.

Deviſe of a term to A. when of age, and in the mean time the occupation and profits to the executrix; if ſhe aliene the term what remedy A. hath—*qu.*

[That he may enter ſee Plow. 539. b. &c.]

28 H. 8 7. Plow. 519, 544. Dy. 358. b.

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* The Dean and Chapter of Glouceſter's Caſe. [* 329. a.]

(12) THE Dean and Chapter of *Glouceſter* made a leaſe of a great wood, called *Byrwood*, reſerving a rent; and for default of payment a re-entry. The rent was arrear; and they by their attorney, authorized by their

If a leaſe be made of a wood only, demand of the rent muſt be made at the moſt open and notorious place in the wood.

36. *Eliz.* A man leaſed two barns rendering rent, with condition &c. the leſſee at the day tendered the rent at one barn, and the leſſor demanded at the other; the leſſor may not enter. [Poph. 58. See 4 Bac. Ab. 359]

common

Co. Lit. fo 202. [4 Bac. Ab. 358, 359.] 25 H. 7. 17 Dy. 102. 1 E. 5. 5. Noy 16.

common ſeal, demanded the rent at an open place in the wood, ſ. a common highway; and the leſſee was ready to pay the rent at another place in the wood. And great contention and variance was between the Serjeants at the bar about the pleading of it; and whether the traverſe ſhould be taken to the demand, or to the readineſs to pay the rent? And at length by the advice of the juſtices, the iſſue was joined upon the demand in the ſaid open place within the wood. And for this caſe a like precedent was ſearched and ſeen of *Eaſter* 4 & 5 *P. & M. rot.* 641. [*Bendl.* 59. 3. *Leon.* 4. 1. *And.* 27.] for an entry for non-payment of rent in lands in *Cornwall*, leaſed by the Biſhop of *E.* and confirmed by the Chapter; but the rent was reſerved and payable at the city of *E.* without limiting any place certain, and the demand of the rent was alleged by the biſhop to be made at the palace of the biſhop in the city of *E.* And that no one came thither to pay &c. and the leſſee alledged a readineſs to pay the rent at the great and common gate of the palace aforeſaid. And iſſue was joined upon that point, and not upon the demand. And the iſſue found for the leſſee and againſt the biſhop, who by his ſervant made the demand of the rent in the hall of the palace only. And this by the advice of *Prideaux* ſerjeant, as they ſay.—But the demand in that caſe was not material, by the opinion of the juſtices in the time of *E.* 6. in *Bridewell*'s caſe. [*Plow.* 69. b. *ante* 68. a. b.] therefore the caſe above differs &c.

20 H. 6. 31. a. 21. E. 4. 41. a. 47. E. 3. 12. 24. 49. E. 3. 14. 22. H. 6. 57. 2. H. 7. 8. Iſſues joyning Br. 91.

[Gilb. on rents 73—90. But now ſee 4 Geo. 2. c. 28. § 2.]

Dy. 18. 4. Co. 73. contra.

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(13) AN award was made between two, of divers things in controverſy between them; and amongſt other things, one article was, that one party ſhould have annually for the ſpace of ſix years then next enſuing, 20*s.* towards the keeping and honeſt education of *A. B.* —And to perform that, the party who ſhould pay the 20*s.* was bound in twenty marks in a bond, upon condition in the ſame bond that if he perform the award, then &c. and the party brought debt and aſſigned in the count default in the payment of the 20*s.* in the fourth year of the ſix years, whereby an action accrued for the twenty marks, without ſaying that *A. B.* was in full life. And for this cauſe the defendant demurred in law upon the count. And, without any ſolemn argument, the opinion of the Court

Bond to pay an annual ſum for ſix years for the education of B. In debt the plaintiff need not aver the life of B. and if B were dead, the payment muſt continue for ſix years.

21 Aſſ. 18. 21. E. 3. 11.

Dy. 50.

24 H. 8. B. 50.

Co. 7 10. 11.

Court was, that the count was good enough without alleging the life of *A. B.* for that ſhould come from the other ſide. But admitting that he was dead before the fourth year of the ſix years, ſtill the payment of the 20*s.* ſhould not ceaſe during the ſix years, which is a time certain, and is a duty to the party himſelf towards the finding of *A. B.* &c. and afterwards in the ſame term judgment was given for the plaintiff.

[H9b. 78. pl. 102. 9. Co. 60. b. Com dig. Pleader (C. 81.) 5 Term Rep. 84.]

35. H. 6. 50. 36. H. 8. 39. 21. E. 3. 12. Br. Conditions 106. 37. H. 8. 59. b.

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(14) A WRIT of falſe judgment was brought on a judgment given in the county court upon a plaint affirmed there in an action upon the caſe for an *aſſumpſit* to the damage of 39*s.* and coſts 10*s.* And to delay the execution of the coſts and damages the writ was brought; and the record was removed, and the writ ſerved, and the plaintiff was nonſuited; whereupon the defendant prayed a *ſcire facias* againſt the plaintiff * to have execution. And by good adviſement the writ was granted, for otherwiſe he ſhall not have any writ judicial to have execution: for the record ſhall not be remanded to another county court &c. See the like 20 & 21. *H.* 6. [18. pl. 11 & 34. pl. 22.] But there was a new writ of falſe judgment directed to the juſtices of the bench *quod coram reſidet*, and error upon that aſſigned in ſtay of execution upon the *ſcire facias*. And the court would adviſe &c.

On a nonſuit in falſe judgment, the record ſhall not be remanded; but a *ſcire facias* iſſue to have execution of the judgment below.

21 H. 6 34. 13. E. 4. 4. a. 8. Eliz. 245. a. B. Faux judgment 15. 21 H. 6. 34. a. 1 H. 7. 20. 29. Aſſ. 43. F. Nat. fo. 60.

[See Ld. Hales note (d) to Fitz. N. B. 39, 40.]

* [329. b.]

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(15) ONE holdeth the half of a knight's fee, called *Bacon's*, in *London*, of the heirs of *Mountfichet*, who held over of the king; *quære* what manner of tenure that ſhall be intended? And it was holden, that it ſhall be intended a tenure by knight-ſervice *s.* the ſervice of the moiety of a knights fee, if no other tenure be expreſsly made and found. See of a knight's fee in the writ *de Scutagio habendo* in *Fitz. Natura brevium* [189.]

He who holds by the moiety of a knight's fee ſhall be intended to hold by knight ſervice, unleſs found otherwiſe.

2 Rol. Ab. 506.

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(16) IF the defendant in a plea real, or perſonal, or in intruſion in the exchequer touching land, convey to himſelf an eſtate of the entire land by the deviſe of a man by his

Defendant claiming as deviſee of the entire land, need not ſhew it to be of ſocage tenure.

(16) *Haſt.* 41. *Eliz.* reſolved between *Sampſon* and *Sampſon*. [Cro. Eliz. 667.] The avowant juſtified under a deviſe of a rent-charge out of the land, but did now ſhew that it was holden in ſocage; therefore bad, *per Curiam*.

Dy. 143 pl. 53. 13. H. 7. 5 a. Plow 376. The law is contrary, ſee ante fo. 50. b. Raſt. Willes 2 3. 7. E. 4. 20. Plow. 3. 40. B. Charter de pardon 46. [See Com. dig. 50. (P) throughout, and 12 Car. 2. c. 24.]

his laſt will in writing, being ſeiſed thereof in fee at the time of the will made; and do not ſhew the tenure to be by ſocage in his plea; and the plaintiff upon the plea demur in law,—*Quære*, if it be of neceſſity that the court muſt intend the tenure other than ſocage *s.* to be tenure of chivalry? And it ſeemed to WHIDDON, BENDLOWS, and DYER, at table, that the general pleading above, without ſhewing the tenure in ſocage, is good enough: and the tenure ſhould be intended by the court to be ſocage, which is the greater part of the tenures of the kingdom. And if he who hath demurred think himſelf aggrieved by the deviſe of the whole, he, to ſave the third part, ought to plead it to be tenure by knight-ſervice, if there be any; otherwiſe the court (which is indifferent, and to whom the law is as well known as it was to the deviſor of the entirety), ſhall intend the deviſe and will of the whole good: for that is the law by the ſtatutes of 32 & 34 *H.* 8. [c. 1, & 5.] if the truth be ſo. Yet the uſual pleading is and hath been ſince the ſaid ſtatutes as the moſt clear and certain pleading, to ſhew the tenure in certain. And SAUNDERS, *chief baron*, held ſtrongly that he is of neceſſity to plead it at this day.

Mich. 31 & 32 *El.* 2912. *C. B.* [Mo. 279. 1 And. 246] *Battery* v *Trovillian* in ſecond deliverance, By all the Court, that the land ſhall not be intended to be ſocage rather than chivalry; and denied this caſe.

In the time of *Eliz.* frequently adjudged and ruled according to the opinion of SAUNDERS.

Dame Baſkervill's Caſe.

Ceſtuy que uſe in tail, before the ſtatute of Uſes, made a feoffment to himſelf, remainder to his ſon and his wife in tail, and after the ſtatute died; the ſon is not remitted, nor can the feoffees enter to revive the ancient uſe. [12 Vin. 277. pl. 46. *in notis.*] [See] Co. 126. a 128. b. Hob. 256 345. Plo. 353. Pal. 140.

(17) CESTUY *que uſe* in tail, remainder to another in tail, the remainder of the uſe expectant in himſelf in fee, in *October*, before the fourth day of *February*, in the twenty-ſeventh year of *Hen.* 8. made a feoffment in fee to the uſe of himſelf for life, and after his deceaſe to the uſe of his eldeſt ſon (being heir in tail) and of his wife for their lives; and after their deceaſe to the uſe of their heirs on her body begotten, and for default of ſuch iſſue, to the uſe of the right heirs of the feoffor. Then the ſtatute * of 27 *H.* 8. [c. 10.] is made. The father died, the ſon and his wife enter, and are ſeiſed of the eſtate tail, executed by the ſtatute. Whe-

* [330. a.]

ther he being ſo ſeiſed and his wife, living the feoffors, may enter upon him to diveſt the poſſeſſion of him and his wife, and to revive the uſe to him and his iſſues, according to the ancient entail, or not? And it ſeems by the opinion of DYER and MANWOOD, that the entry of the feoffees to revive the former uſe is not lawful, for two cauſes;—firſt, becauſe the fee ſimple of the uſe above is legally departed with, and thereof the right of the feoffees bound by the ſtatute of *R.* 3. [*anno* 1. c. 1.]; then the feoffees by their entry cannot have their former eſtate, *s.* fee ſimple &c. The other cauſe is, that the ſon and heir cannot have any other eſtate contrary to his own act, and contrary to th ſtatute of 27 *H.* 8. therefore he cannot be remitted to the ancient uſe &c. And this opinion was reported in the chancery by the ſaid juſtices in the next *Eaſter*, and CATLYN and SAUNDERS were of the ſame opinion.

Dy. 89.

1 Co 176. a. 128. b. Co Lit. 18. a. 348. b. Dy. 274. pl. 39 Plow. 350.

[See ante 58. a. pl. 4.]

7 E. 6. 88. b. Hob. 256. 34. H. 8. Br. remitter 49.

Dy 54, 77, 166. b. 28. H. 8. 24 a.

[Com. dig. Remitter (C. 6.)]

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(18) IN debt the defendant waged his law; and at the day in the other Term to make his law, he did not come, nor was any (*a*) eſſoin caſt for him, but a *ne recipiatur aliquod eſſonium* was entered on the eſſoin roll; and yet on the plea roll there was entered, "at which day the "defendant cauſed himſelf to be eſſoined *de malo veniendi* "&c." and day given over to another Term; at which day the defendant failed of his law; wherefore the plaintiff had judgment to recover: and afterwards the defendant brought a writ of error. And before any error aſſigned, or *ſcire facias* to hear the errors awarded, he (craftily, well knowing that no warrant of eſſoin was entered on the roll of eſſoins, and to prevent his adverſary leſt he ſhould cauſe an eſſoin to be entered upon the eſſoin roll of that rerm, by which means the error would have been rectified), alleged diminution of the record in this point, and prayed a *certiorari* in *B. R.* directed to the Chief Juſtice of the Bench, commanding, that having ſearched the roll of eſſoins of the term and year &c. he ſhould certify, whether it have any ſuch eſſoin &c. or not; and if he

Though the eſſoin be entered on the plea roll, want of it on the roll of eſſoins is error. So of a warrant of attorney not entered on the roll of warrants of attorney. But it is not ſo of admiſſions of guardian or *procbein ami.*

R. 363 Rol. Contin. 186. Godb. 408.

13 H. 4. Tenor 91. 1. Keb. 460.

7 E. 4. 25. b.

(*a*) In *Argent* v. *the Dean and Chapter of St. Paul's*, *B. R E.* 23. *Geo.* 2. cited by BULLER, *J.* in 2 Term Rep. it was held that no eſſoin could be caſt in perſonal actions. But ſee 2 Wilſ 164. and the caſe of 2 Term Rep. 16. was of ſuch eſſoin.

ſhall

shall certify that it has no essoin &c. according to the truth, then after that his adversary will not have any advantage by the alleging of diminution in that point, although in the mean time he have caused an essoin to be put on and entered in the roll of essoins of that term. And so note, the judgment is reversable for this want of an essoin, although the court have recorded an essoin by the plea roll. The same is the law of a warrant of attorney, not entered on the rolls of warrants of attorney, made by the clerk of the warrants. It is otherwise of an admission of a guardian or *prochein ami*, which is the act of the court only, without any "such a one puts in his place such a one &c." And afterwards the judgment above was reversed for the error above, upon such certificate as above.

[Ante 223. pl. 27.] 13 Error 91. 4. H. 7. 7. 8 E. 4. 18. 4 E. 4 2. [3 Com. dig 321.] Dy 180. 225. a. 262. pl. 5. 7. Eliz. 231. a. Pl. 229. [Vide ante 262. b. pl. 33. note (a).] 4 Co. 53, 54.

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* [330. b.]

Avowry for fealty and suit of court alleging seisin by fealty, rent, and suit, proof of seisin by rent only will not support an issue on the whole seisin traversed. Whether the lord avowing for services must allege seisin within fifty years, and the tenant traversed that he was seised after the limitation?—*quære*. Dy. 32 pl. 7. 260. pl. 22. Co. 4. 9. a. 9 Co. 33. 1. Mar. Br Avowry 107. Dy. 315. 1. Cro. 83. Raft. Limitations 3. [See Cro. El. 709. and Com. dig. Pleader (3 K. 15, 16) 11 G 3. c. 19 § 22. and of variances in evidence. See Cowp. 756. Doug. 66. 1 Term Rep. 237. 3 Term Rep. 643. 4. Term Rep. 558. 1 H. Bl. 162. 283.]

(19)* IN replevin, the conusance was made as bailiff of *I. R.* lord of the manor of *H.* in the county aforesaid, supposing that the land where &c. was holden of the said *I.* as of the said manor by fealty and rent of 21*d.* and suit of court; and alleged seisin of all the said services within fifty years &c. and for fealty and suit of court not done, the conusance was made as in lands holden of the aforesaid *I. R.* in form aforesaid, and within his fee &c. And the plaintiff conveyed to himself the land from him by whose hands the seisin was alleged, saying that he held it by fealty, 12*d*, and suit for all services, and traversed the seisin of fealty, rendering of 21*d*, and suit of court by an *absque hoc*, &c. And the defendant, as before, maintained the seisin upon which they were at issue. And the jury, at *nisi prius* in *August* last past, found the seisin of the rent of 21*d. prout* &c. and assessed damages for that; but of the residue of the services he was not seised &c. And upon this verdict no judgment shall be given, PER CURIAM, because all the things comprized in

(19) *Hil.* 35. *El. C. B.* Avowry was made, for that the plaintiff held of him, *B. Acre* by 2id rent, and for that in arrear. The plaintiff said that he held that acre and three others by 12d rent; and the avowant said, that he held that one, without this &c. and it was found that he held that one and two others, and PER CURIAM, the avowant shall recover, for the substance is found. And WALMSLEY put a difference when the matter in issue and the matter found is the substance of the action, and when matter collateral as the seisin is here.

Note well the diversity, and note there that the plea is in the affirmative, and all is not as it affirms, but the negative of the other party is found true.

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the traverſe by the *abſque hoc* are not found for the party affirmatively. And *quære* whether he ought to allege ſeiſin of the ſervices aforeſaid after or within fifty years, by reaſon of the ſtatute of Limitations in the 32 year of *H.* 8. [c. 2.], and alſo of this form of traverſe to the ſeiſin; for in precedents the iſſue was "*not ſeiſed ſince the* "*limitation.*" [See 9. Co. 34. b. 35. a.]

Clache's Caſe.

Raſt. 14 Eliz. rot. 280.

(20) *EDWARD CLACHE*, being ſeiſed in fee of two meſſuages of ſocage tenure, one of the annual value of 24*s.* the other of 36*s.* had iſſue one ſon, named *Henry*, and two daughters *s. Alice* and *Thomaſin*, by three ſeveral venters; and *A.* had iſſue two daughters, and died, living the father. *Edward Clache*, by his laſt will, gave the meſſuage of 24*s.* "to his daughter *Alice*, to have "to her and to her heirs for ever. And the other meſ- "ſuage, called his great and principal meſſuage, he gave "to *Thomaſin* his youngeſt daughter, being then of the "age of eight years, to her and to her heirs for ever; "and if ſhe died before the age of 16 years, *Alice* then "living, then he willed that his daughter *Alice* ſhould "have and enjoy the ſaid principal meſſuage to her and "to her heirs for ever; and if *Alice* ſhould die. having no "iſſue, *Thomaſin* living, then he willed that *T.* ſhould "have and enjoy the ſhare of *A.* to her and to her heirs "for ever; and if both his ſaid daughters *A.* and *T.* "ſhould die, having no iſſue, then he willed and be- "queathed all his ſaid meſſuages to the two daughters of "*H. Clache*, to them and to their heirs for ever; and if "they ſhould both die, having no iſſue, then he gave "all to a ſtranger in fee, provided always that if *A.* his "eldeſt daughter, do marry, *I. H.* then he wills and be- "queaths all her part to *Thomaſin*, and to her heirs for ever; "provided alſo, that if *Thomaſin* die, having * no chil- "dren, then he willeth all the premiſes to the ſaid two "daughters of *H. Clache*; and if they die, having no "child, then it to remain to the ſaid ſtranger as is above- "ſaid." *E. Clache* died; *Alice* refuſed *I. H.* and took to huſband *G.* and entered into her legacy: *Thomaſin*, her ſiſter, after ſhe had accompliſhed the age of ſixteen years died,

A. deviſes land "to B. "and her heirs for "ever, and other lands "to C. and her heirs; "but if C. die before "16, living B. her part "to B. and her heirs; "and if B. die, living "C. her part to C. and "her heirs; but if both "die, having no iſſue, "then to D." Holden that theſe are eſtates tail, and not conditional fees, and that B. and C. do not take croſs remainders; for no implication will make a croſs remainder where there is a ſpecial limitation by the teſtator himſelf.

Bendl. 42. 2 Cro. 656. 59. 2 Keb 193, 196, 262. 2 Brn. 77. 2 Leon. 62. 3 Leon. 117. 2 Leon. 42. 3 Leon. 167. 19 H. 8. 4.

3 Bulſt. 195. Pal. 131. 2 Ro. Rep. 196. Vaug. 267, 271, 239.

2 Bulſt. 180, 273. 1 Keb. 30. 531.

* [331. b.]

died having no iſſue. Whether *Alice* or the two daughters of *H. C.* ſhall enjoy the principal meſſuage which *Thomaſin* had, *quære*. And in the next term the caſe was argued at the bar and bench, and holden by three *s.* MOUNSON, MANWOOD, and DYER, that *Alice*, the wife of the plaintiff, had no right to that principal meſſuage called *Walgates*, but the two daughters of *H. C.* who were heirs to the deviſor, have right; for it appears by the caſe that the deviſor had more affection for *Thomaſin*, the youngeſt daughter, than for the eldeſt; and the deviſor never intended that the principal houſe ſhould go to *Alice* unleſs *Thomaſin* had died within the age of ſixteen years; and no implication of any croſs-remainders can ſerve when an expreſs and ſpecial gift and limitation is made by the deviſor himſelf. And by the opinion of DYER here is no entail to any of the daughters, but each hath a fee ſimple conditional upon a ſubſequent contingency; but the other three juſtices thought the contrary. See the like *poſtea*, fol. [333. b. pl. 29.]

2 Ro. Rep. 218.

Dy. 171. a. 303, 304. 3 Bulſt. 102, 195. [Cowp 34, 780, 797. Ambl. 695. 4 Term Rep. 710. Mr. Harg. note (1) to Co. Lit. 195. b. Gilb. Deviſes 59. 80.]

1. Sid. 148. 13 H. 7. 17. Dy. 304. a. 354. a. 3 Mar. 122. a. Plow. 341. 1 Ro. Abr. 835, 9. Mo. 362. [See Sir T. Jones 173. 1 P. Wms. 23. Cowp. 234, 410. 833 Dougl. 221. 3 Term Rep. 143. 484. 4 Term Rep. 441. 605.]

Hilary Term,

16. Queen Elizabeth.

Mich. 15. 16. Eliz. rot. 1806. Wheatley.

Hunks *againſt* Alborough.

A. bequeaths after payment of his debts and legacies, *the reſidue to his wife, to diſpoſe for the good of his ſoul*, and makes her executrix. She takes the reſidue as ſuch, and not as legatee. [Bendl. 219.] 1 And. 22. S. C. Mo. 98. Bendloſe 43. Wentw. 12. Dy. 367. pl. 39. Plow. 543. b.

(21) A MAN, after divers legacies made of his goods, by his laſt will and teſtament, gave and bequeathed to his wife the reſidue &c. by theſe words, *s. The reſidue of all my goods I give and bequeath to Frances my wife, whom I make my full and whole executrix of this my laſt will, to diſpoſe for the wealth of my ſoul, and to pay my debts &c.* and died: the wife proved the will, and paid all the legacies and debts; and after that ſhe took another huſband, who made his executors, and died poſſeſſed of the

the ſaid goods, the reſidue &c. Whether the wife or the executors ſhall have and enjoy the ſaid reſidue, *quære* in detinue brought by the wife againſt the executors, who pleaded the caſe above. The plaintiff demurred in law, and in next *Eaſter* the caſe was argued at the bar, by *Meade* for the plaintiff, and *Jeffries* for the defendant, in the abſence of MOUNSON (who was in the chancery for a cauſe of his own againſt *Aſcough*). But the opinion of all the juſtices was for the plaintiff, becauſe the legacy to the wife is not to her own uſe to diſpoſe of at her pleaſure or diſcretion, but for the welfare of the ſoul of the teſtator, and to pay his debts, which is the office of an executor to do; ſo the words in the * legacy void and ſuperfluous.—See accordingly, in treſpaſs *E.* 21. *E.* 4. fol. 36. [6. a pl. 15.] by BRIAN & 7 *H.* 4. [13. b. pl. 10.] in detinue of a legacy delivered by a *feme covert*, executrix of her firſt huſband; and *M.* 21 *H.* 7. [26. b. pl. 3.] by FINEUX, the wife, executrix of the firſt huſband, ſhall have the goods of the firſt huſband, and not the executors of the ſecond huſband, if he do not make a gift of them in his life-time &c. And ſee 6 *H.* 7. fol. 6. [5. a. pl. 5.] in treſpaſs, where the teſtator gave and bequeathed to one of the executors (the debts and legacies all paid) the reſidue of his goods to have to his own uſe, and good to him only. And ſo judgment was given for the plaintiff.

27. H. 8 22. a 21. E. 4. 41. b. 28. H. 8. 7. a.

Plow. 343, 545. 4 Co. 73. b. 3 Cro. 341. R. 22. Went. 365. 16 H. 7. 6.

[1 Br. Ch. Caſ. 135.]

Dy. 7.

* [331. b.]

10 E. 4. 9. Br. Execut. 114.

28 H. 7. 5. a.

28 H. 8. pl. 5. contr.

Somets *againſt* Stanton.

(22) KING *H.* 8. being ſeiſed of a grange called *S.* in the pariſh of *Great Brickhill*, in the county of *Bucks*, (to which divers lands and tenements as well in the ſaid pariſh as in another pariſh of the ſaid county belong) by his letters patent, made in the 33d year of his reign, gave and granted the ſaid grange with the appurtenances in the ſaid pariſh, and divers particulars expreſsly named in the ſaid pariſh, with a general clauſe of *all other lands and tenements in the pariſh of Great Brickhill aforeſaid, to the ſaid grange belonging*, not making mention of the other pariſh, and yet reſerving the tenth of all, as it were rent. And the particular of the auditor in the general clauſe of

The ſtatute 34 H. 8. c. 2. of Miſnomer in the king's letters patent does not aid Non-noſmer.

2 Co. 34. b.

6 E. 6. 77. b. 7 H. 4. 41. a. 6 E. 4. 6.

Hob. 111.

all other lands and tenements &c. was, *to the ſaid grange appertaining*, without any reſtraint of pariſh, or naming of any pariſh &c. Whether the patentee may have the lands in the other pariſh by the ſtatute of Miſnomer &c. in the 34 year of *H.* 8, c. 21? was the queſtion between *Somers* and *Stanton*. And the opinion of divers was, that nothing in the other pariſh paſſed; for the ſtatute does not aid Non-noſmer &c. and according to that *Somers* had £.300 for the title and arrears by the award of WALTER MILDMAY, Knight, *Chancellor of the Exchequer*, and of me JAMES DYER.

Raſt. Patents 12.

2 Co. 34. b.

The conuſor of a ſtatute enfeoffed of his lands A. B. and C ſeverally; execution is ſued againſt A. alone; in *auditâ querelâ*, to have *B* contributory, he cannot plead to the *ſcire facias* that C. has been likewiſe omitted; but muſt ſue his *auditâ querelâ*. F. Nat. 103. Nota. 3 Co. 14.

(23) A Conuſor of a ſtatute ſtaple ſeiſed in fee of lands in the counties of *Somerſet* and *Dorſet*, enfeoffed ſeverally *A.* and *B.* of the lands in the county of *S.*, and *C.* of the lands in the county of *D.* The conuſee ſued execution in the county of *S.* only, and the lands of *A.* are extended and delivered; and the ſheriff returned upon the extent that thoſe were all the lands &c. which the conuſor had in his bailiwick on the day of the recognizance &c. and that no other or more lands or tenements &c. And *A.* aggrieved by this execution againſt him only, ſued an *auditâ querelâ* in the chancery, and had a *ſcire facias* returned into the county of *D.* to have *C.* contributary &c. And *C.* came, and pleaded this omiſſion of the lands in the poſſeſſion of *B.* in the county of *S.* in abatement of the writ; and thereupon was a demurrer in law. And by the opinion of divers juſtices it is (*a*) no plea, for the plaintiff * is not bound peremptorily to take notice at his peril of all the terre-tenants and

Jo. 90. 2 Bulſt. 12. [Gilb. Executions 115, 116.]

* [332. a.]

(23) In *ſcire facias* againſt the heir and terre-tenants, the ſheriff returned *I. S.* terre-tenant, who pleaded jointenancy with two others, and holden good; and there if is ſaid that the tenant returned upon the *ſcire facias* ſhall never have *auditâ querelâ*, where he may plead jointenancy, or ſhew other lands to be liable upon the *ſcire facias* *H.* 39. *Eliz.* in chancery *Mo. Rep.* 63, 64. [524] &c. *Clerk's* caſe.

(*a*) And by 16 & 17 *Car.* 2. c. 5. § 2. It is enacted, that when any judgment, ſtatute, or recognizance ſhall be extended, the ſame ſhall not be avoided or delayed by occaſion that any part of the lands or tenements extendible, are or ſhall be omited out of ſuch extent, ſaving always to the party &c. his remedy for contribution againſt ſuch perſon &c. whoſe lands &c. are omitted. But by § 4. this extends only to ſuch ſtatutes as are for payment of monies, and to ſuch extent as ſhall be within twenty years after the ſtatute, recognizance, or judgment, had and obtained.

lands

lands which are liable to this ſtatute, but of his own &c. And the defendant here may well proſecute his *auditâ querelâ* to have contribution alſo of the other terre-tenants &c. And ſo the report was made in the Chancery by DYER and MANWOOD, *Juſtices*, in the next *Eaſter* Term.—See the like in the following caſe.

12. 16 H. 7. 22. 6. b. Coke 3 14. b. 1. Co. 87. b. F. Nat. 105 b. Mo. 524.

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(24) THE conuſor of a ſtatute merchant enfeoffed ſeverally divers perſons of his lands and tenements. The conuſee ſued execution againſt one of them only, he ſhall have *auditâ querelâ* againſt the conuſee for this omiſſion of the other terre-tenants chargeable, to make them contributory to an equal and common execution; and the writ ſhall be directed to the Juſtices of the Bench that, *auditâ querelâ* of the party grieved, and having called before them thoſe who ſhould be called, they ſhall make due and ſpeedy completion of juſtice. See the form of the writ thereof in the *Regiſter*, fol. 149; and for the caſe ſee 45 *E.* 3. [17. b. pl. 9.] and *Fitz.* tit. Execution 127. and 13 *H.* 7. fol. 22. But of ſtatute ſtaple the ſuit ſhall be made in the Chancery by *auditâ querelâ* directed to the Chancellor or Keeper of the Seal &c. or by *ſci. fa.* directed to the ſheriff &c. *quod ſit &c. quare tenementa extenſa una cum proficuis medio tempore perceptis reſeſir. &c.*

Auditâ querelâ upon a ſtatute *merchant* ſhall be directed to the juſtices of C. B. but on a ſtatute *ſtaple* it ſhall be to the Chancellor.

[But ſee] 1 Leon. 140, 141. 304. [and Cro. El, 208. 1 And. 227. Gilb. Executions 116 16 & 17. Car. 2. c. 3.

9 H. 4. 140. Regiſter 149. 16. H. 7. 6. 23. H. 8. 71. Fulb. 131, 102. b. 6. E. 3. 21. a. 29. E. 3. 7. 29. a. 33. E. 3. Audita querela 38. 2. Bulſt. 14. 5. E. 3. 15. 37 H. 6. 6. a.

F. Nat. 131. b.

3 Co. 14. b. 6 Co. 14. Plow. 72.

Eaſte

[332. a.]

Eaſter Term,

16 Queen Elizabeth.

Saunders and Browne's Caſe.

A wife conſpiring with a ſervant to kill her huſband, though he be killed in her abſence by the ſervant, is guilty of petit treaſon. *Secus* of ſuch conſpiring with a ſtranger.
2 Inſt. 20. Fulb. 48. a. Stamf 10 a. 3 Mar. 128. a. Dy. 57. 187. Br. Treaſon 16. 40 Aſſ. 25. Crompt. 16. 8 El. 254. a. Dy. 103.
[1 Hawk. P. C. 132, 133. 2 Hawk. P. C. 445.]

(25) THE wife with the ſervant conſpires the death of the huſband, and appoints time and place: and the huſband is killed by the ſervant accordingly, in the abſence of the wife. This is petty treaſon in both, notwithſtanding the wife was not preſent, by the opinion of divers Juſtices: otherwiſe, if it had not been the ſervant, but a ſtranger; as in the caſe of the murder of *Saunders*, of *London*, by *Browne*, who was principal, by the procurement of the wife of *Saunders*, acceſſary; for ſhe was not burnt (*a*) but hanged, becauſe *Browne* was not a traitor, but a murderer &c.

(*a*) By 30. *G.* 3. c. 48. the puniſhment of burning women is changed to hanging.

Mich. 14. 15. El. rot. 2142.
Waſte, for ten oaks, plea, "*that defendant cut down three to make poſts, which he did make and placed in the ground to divide* ſeparalia clauſa *there*," but did not allege the number of cloſes, or that they had uſed to be divided, or that all the three were expended; and as to the reſidue "*that they were dry, hollow, and rotten at the tops not being ſufficient timber for building*," holden not ſufficient juſtification.
[Mo. 110.] S. C.
Bendl. 217.
Bend. fo. 42. 1 Inſt. 54. b. Dy. 37. pl. 44.

Manwood, Juſtice, *againſt* Myme.

(26) WASTE was aſſigned in ten oaks, in eighty acres of land, *ſparſim creſcentes*; the defendant, as to three, juſtified the cutting them down, and made ſix poſts, and fixed them in the ſaid tenements *to divide the ſeparate cloſes there* &c. without expreſſing the number of the cloſes, but only *in three fields* &c. and without alleging a preſcription of old times for ſuch kind of incloſure, and without alleging that the three * trees were all employed in the ſix poſts; and alſo he did not allege in fact that they were employed, *ſ.* "*that the cloſes were ſeparated*;" and poſts only fixed in the earth do not make a ſeparation of an incloſure, wherefore &c. And as to the reſidue, he ſaid that they were dry, hollow, and rotten at the tops, not being ſufficient timber for building &c. and did not ſay according to the precedents and entries *ſ.* that they were dead, not bearing fruit or foliage in ſummer

&c.

&c. wherefore &c. And the opinion of MOUNSON, HARPER, and DYER, was for the three trees for the plaintiff, becauſe it is not a ſufficient juſtification for the cauſes aforeſaid. Alſo there was another fault in the plea; for he ſaid, that the occupiers of the land aforeſaid have been uſed to come in and go out *per poſtes prædictas*, and this is impoſſible; but it ought to be *inter poſtes prædictas* &c. And for the ſeven trees, MOUNSON and HARPER thought the plea inſufficient for the cauſe aforeſaid; but DYER thought that it amounted to as much as the precedents and entries before, becauſe the three adjectives *s. dry, hollow, and rotten at the tops*, prove as much, But *not being ſufficient timber for buildings* is not good form, for it may ſerve for other uſes, as to make poſts as above, altho' not ſufficient for buildings &c.

N. E. 617. Fitz. 52. M.

Co. Lit. 53. a.

Sir Nicholas Carewe's Caſe.

(27) *H.* 8. in the 14 year of his reign, gave the manor of *Blechingley* to *N. C.* Knight, and *Eliz.* his wife, and to the heirs male of their bodies, remainder to the heirs male of the body of the ſaid *N.* ſaving the reverſion to the king. They have iſſue *F.*—*N.* in the 20 year of *H.* 8. was attainted of treaſon, and executed; and the attainder confirmed by act of parliament in the 31 year of *H.* 8. and all his lands given by the act to the king, whereof he, or any other to his uſe, was ſeiſed of any eſtate of inheritance, with a ſaving of their rights to all ſtrangers &c. other than to the ſaid *N.* and his heirs; but no entries are ſaved. The king ſeiſed the manor, and by patent granted it over &c. *Eliz.* died, and *F.* as ſon and heir to him, claimed it of the Lord *C. H.* of *Eff.* *Quære* the ſtatute of 26 *H.* 8. c. 13. in the laſt article. And by the opinion of WRAY, SAUNDERS, and DYER, given to the Lords of *Suſſex*, *Leiceſter*, and *Burleigh*, arbitrators &c. the entail was forfeited by the ſtatute of 26, and ſo extinct after the attainder, and the heir diſabled; becauſe he muſt, in his lineal conveyance, make himſelf heir as well of the body of his father as of his mother, wherefore &c. And to this opinion CATLYN agreed. And according to that opinion the ſaid arbitrators

A. and his wife donees in tail, the reverſion in the king. A. having iſſue, is attainted of treaſon, the entail is forfeited, for the iſſue muſt convey through both.
1 And. 39. S. C. Hob. 346, 257.

Co. 9. 139. a. Dy. 347.

Mo. 141.

Raſt. Treaſons 12. 1 Brn. 139.

5 H. 7. 33. a. 8 H. 4. 11. b. 41. E. 3. 24. Poulton 236. 8 El. 251. b. 3 Mar. 122. b. 3 Co. 41. a. Rol. Contin. 321.

bitrators gave their award; with which *F.* and his counſel were diſcontented. And therefore at *Leiceſter Place*, in the next *Hilary* Term, the ſaid arbitrators were aſſembled, and the ſaid Juſtices; and after long debate of the caſe between the counſel of the aforeſaid parties, the Juſtices gave their opinions as above.

[2 Hawk. P. C. 642. 1 H. H. P. C. 256. 3 Bac. Ab. 316.]

Middleton's Caſe.

A citizen of London being diſfranchiſed for refuſing to ſtand to the award of two of the aldermen in a cauſe in C. B. a Mandamus was granted to reſtore him. 4 Leon. 61. 11 Co. 53. b. 98. a.

(28) MEMORANDUM, that one *Middleton*, citizen and haberdaſher of *London*, ſued one *Oſborne*, another citizen and haberdaſher of * *London*, and lately his journeyman, in debt on bond in *C. B.* and was condemned. For which ſuit, becauſe he would not ſtand to the arbitrement and order of one Sir *Rowland Haward*, and Sir *Lionel Ducket*, Knights, Aldermen of the ſaid city, *Middleton* was diſfranchiſed; upon which he ſued for remedy

* [333. a.]

(28) *Trin.* 4 *Jac. B. R. Tompſon* v. *Edmonds.* [2 Rol. Ab. 456. pl. 4.] *Cambridge* is incorporated by the name of mayor and bailiffs &c. and there is a clauſe in their charter, that the mayor and burgeſſes may diſplace the bailiffs. *Tompſon*, who was one of the bailiffs lawfully elected, was diſplaced by the mayor and burgeſſes, and came into *B. R.* and ſhewed that he was diſplaced by the diſpleaſure of the mayor, *Edmonds*, without cauſe; and although the charter warrants that the bailiff may be diſplaced, yet being an officer of the king as a bailiff is, he cannot be diſplaced without cauſe: and if there was cauſe, that ought to be returned upon the *pluries*, in which is a *vel cauſam nobis ſignifices*; for none of the other proceſſes were returnable; and becauſe it appeared that *Tompſon* was removed without cauſe, he was reſtored.

Mich. 17 *Jac* [2 Rol. Rep. 112. Cro. Jac. 540.] *Chriſt. Warren* in *B. R* ſued to be reſtored to the common council of *Coventry*, from which he was excluded. The mayor and council make return, that they have a cuſtom &c. that the mayor and twelve of the council may elect or remove any at their pleaſure, and ſo juſtify; and it was allowed good, for one of the council is eligible, but an alderman hath intereſt; and in ſuch cauſe diſfranchiſement. [See 2 Salk. 430. 1 Lord Raym. 391. 1 Bur. 525. Cowp 502. 2 Term Rep. 541. 560.]

By *Dodderidge* in this caſe of *Middleton*, although the matter was in *C B.* yet the writ of reſtitution was awarded out of *B. R.* and the reaſon is becauſe the court of *B. R.* is the moſt high court for the preſervation of the peace, and it appertaineth not to any other; and as to that, he cited divers precedents that it hath not only the power to grant reſtitution in caſe of franchiſe, as *Bagg*'s caſe [11 Co. 98.] but in the caſe of offices alſo. *B ſon* being town-clerk of *B.* was choſen alderman, to put him out of his office, for they were incompatible offices in one perſon; he prayed reſtitution to the office of town-clerk; and it was granted. See Dougl. 398. 2 Term Rep 81. 772.]

Middlecott was choſen conſtable, and the juſtices of peace † *ouſted* him, and he was reſtored by this court. Theſe precedents were cited in *Audley*'s caſe, [Lat 122. Noy. 78. Poph. 176.] (it was in *Eaſt.* 2 *Car. B. R.*) who † *had* a grant of town clerkſhip in roverſion, and the preſent town-clerk being dead, the corporation grant the town clerkſhip to one *Joy* who was in poſſeſſion, whereupon *Audley* had a writ of reſtitution granted by the juſtices. *Eaſt* 3. *Car.* the *Lord the King* v. the *Mayor of Oxon.* [Lat. 229 Palm 451.] *Harris* being Mayor of *Oxon*, was depoſed and diſmiſſed from his aldermanſhip, and thereupon he came into *B. R.* and there prayed a writ of reſtitution; and it was granted to him.

6. *R.* 2 Cloſe-roll, membr. 8. A writ iſſued to the mayor and commonalty of *Briſtol*, that where they had adjudged certain perſons diſfranchiſed of the city, they ſhould now reſtore them on pain of all that they could forfeit.

† Orig. *ent.* ‡ Orig. *ancient.* § Orig. *icy.*

Trin.

medy in *C. B.* to be reſtored to his freedom again. And for that purpoſe a precedent of *B. R.* before FORTESCUE, *Chief Juſtice*, in the time of *H.* 6. was found in theſe words, " The king to the Mayor of the city of *London*, greeting. Whereas *Richard Anable*, of *London*, pewterer, according to the laws and cuſtoms of our realm of *England*, in our times and thoſe of our anceſtors, kings of *England* hitherto, for all the liege ſubjects of us and of our aforeſaid anceſtors uſed and approved of, in our court before us by our writ hath impleaded *Thomas Fawconer*, of *London*, mercer, late eſcheater of our city aforeſaid, of certain treſpaſſes in that writ ſpecified, committed againſt the ſaid *Richard* as is ſaid; yet on behalf of the aforeſaid *Richard*, in our court aforeſaid, before us, we have received grievous complaint, containing, that altho' the ſaid *Richard*, from long time back, hath been admitted to the liberties and franchiſes of the city aforeſaid, the liberties and franchiſes of the ſame within the ſaid city to have and enjoy as other fellow-citizens have been accuſtomed their ſtate and condition in the ſame city to have and enjoy; and he the ſaid liberties and franchiſes within the ſame city, as one of the fellow-citizens of the ſame city, from the time in which he was admitted until he moved and proſecuted his plaint aforeſaid, for the treſpaſs aforeſaid, againſt the aforeſaid *Thomas*, in our court before us, peaceably and quietly was uſed to enjoy and have, you by reaſon of the removing of the aforeſaid plaint againſt the aforeſaid *Thomas*, and the proſecution thereof elſewhere than before you within our city aforeſaid, do intend to cauſe the ſaid *Richard* his liberties within our city aforeſaid to loſe; and have cauſed the doors and windows of the dwelling-houſe of the ſaid *Richard*, within the ſame city, to be ſhut and bolted; and have impoſed and cauſed to be impoſed upon him many other burdens not to be borne, whereby the ſaid *Richard* is the leſs able to obtain juſtice in his ſaid plaint of the treſpaſs aforeſaid in our ſaid court before

Trin. 17. *Jac.* [*ſupra*] *Warren* of *Coventry* was diſfranchiſed, and the return was of a cuſtom to remove an alderman at their pleaſure, and ruled bad. So

† *Wright* and *Alderman Lumley*'s caſe. *Wright* was diſranchiſed in the Court of Aldermen and fined, and error thereupon out of chancery to *Juſtice* DODDERIDGE and *Juſtice* WINCH. See more of that, *Eaſt.* 3. *Car. B. R.*

" us

" us freely, as our l ge ſubject, in contempt of us and " to the great damage of the ſaid *Richard*, and to the " evil example in that behalf, and great derogation of " our royal crown and dignity, chiefly ſince the prero- " gative of our royalty which we and our anceſtors " aforeſaid have of right uſed, appertaineth to our royal " dignity as a right of our crown annexed to our perſon, " that every liegeman of ours who will proſecute that his " right before us ſhould there freely obtain it without
*[333. b.] " any ſcorn, vexation, * grievance, or impediment on " that occaſion, in any way, by any one impoſed on " him. We therefore command you, firmly injoining, " that if any doors or windows of the dwelling-houſe of " the ſaid *Richard* on that occaſion ye have cauſed to be " ſhut up, ye do cauſe them, without delay, to be open- " ed; and the ſaid *Richard*, or the complainant afore- " ſaid, and each of them by the occaſions aforeſaid, not any- " wiſe moleſting or aggrieving; and if any thing to the con- " trary hereof ye ſhall have done, that ye do without delay to " the ſaid *Richard* relax, and cauſe the ſame to be amended.— " witneſs J. FORTESCUE."

[1 Bur. 525.] A like writ was made this term, but in a better form, directed to the Mayor, Aldermen, and Sheriffs of *London*, with words to reſtore him to his former liberties &c.

Chapman's Caſe.

C. deviſes a houſe to three brothers, *provided always that the houſe be not ſold, but go unto the next of blood that are males.* This is an eſtate tail to each ſucceſſively. Deviſe to one brother on condition, but on failure *to remain to the houſe*, ſhall be conſtrued *to the moſt worthy in blood of* the deviſor's family.

28 H. 8. 25. a. 14 Jac. Cro. 416. D. 8. 107. a.

(29) *RICHARD CHAPMAN*, ſeiſed in fee of two houſes in *Beverley*, having three brothers; by his laſt will in writing had theſe words *ſ.* " I will the " houſe that *I. V.* dwelleth in, to my three brothers " among them, and *I. V.* to dwell ſtill in it, and they " to raiſe no ferme; and I will the houſe that *Tho. Chap- " man* my brother dwelleth in, to him, and he to pay " to *Chriſtopher Chapman* £. 3 6*s.* 8*d.* to find him to ſchool " with, and elſe to remain *to the houſe*, provided always " that the houſes be not ſold, but go unto the next of " the name and blood that are males (if it may be):" and ſo died, living his three brothers.—*T. C.* the deviſee, died ſeiſed without iſſue; the elder of the two younger brothers entered, and had iſſue a ſon, and died. It was a queſtion,

a queſtion, Whether the ſon or the other younger brother ſhould have the houſe. And the next term the caſe was debated at the Bench. And it ſeemed to MOUNSON, MANWOOD, and DYER, that the ſon of the elder brother ſhall have the remainder, and that in tail to him and to the heirs male of his body &c. remainder to the younger brother, according &c. And alſo the firſt houſe given to them three, between them, ſhall be likewiſe in tail in each of their ſhares; and the clauſe or proviſo, that the tenants ſhould not aliene, proves the intention of the deviſor to make an entail, which eſtate may not be legally aliened &c. And the words, "*or elſe to remain to the houſe*" *s.* family; which ſhall be intended to the chief and moſt worthy and eldeſt perſon of the family &c. And the words, *that are males*, ſhall be taken in the future tenſe; and the one to ſucceed the other according to the courſe of the common law &c. And HARPER to the contrary.

Dy. 503. pl. 49. 2 Keb. 783. 3 Bulſt. 101, 195. Hob. 33.

Dy. 331. 1 El. 171. a.

9 Co. 128. a.

[Shep. Touch. 423. Plow. quar. 33. in margine. 1 Hen. Bl. 461.]

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(30) THREE coparceners of a manor; and one of them made a feoffment of his part to one *A. B.* in fee, to the uſe of himſelf for the term of his life, and after his deceaſe to the uſe of his eldeſt ſon and heir * apparent in fee: and afterwards he levied a fine of the third part of 200 acres of land, 400 acres of meadow, 500 acres of paſture &c. (which amount to more, in number of acres, than the whole manor contains) *ſur conuſance de droit come ceo quel il ad de ſon done*, with warranty of him and his heirs, and took back an eſtate by the ſame fine to himſelf for the term of his life only; and afterwards he died, and the ſon entered. Whether the third part of the ſaid acres be ſevered from the manor by this fine againſt the heir, or he ſhall be received againſt that fine to aver a continual poſſeſſion and continuance of ſeiſin before the fine, at the time of the fine, and ſince the fine &c. in the tenement for term of life? that was the queſtion. And great debate thereof among the counſel. And PLOWDEN, BROMELEY *Solicitor*, and LOVELACE held ſtrongly, that this averment by him in remainder who was a ſtranger to the fine, ſhall be received, becauſe neither a party to the fine, or heir of the parties &c. And this they pretend

A coparcener tenant in tail levies a fine *come ceo* with warranty of his part, and takes back an eſtate for life; his heir ſhall not be permitted to aver continuance of poſſeſſion againſt this fine, which is a feoffment of record, and a diſcontinuance.

[Cruiſe on Fines 160, 161. Shep. Touch. 34 & 14.]

3 E. 3. 31. 42. E. 3. 12.

* [343. a.]

40. 41. E. 3. 30. 29. b. 6 H. 4. 4. a. 30. Aſſ. 9.

11 H. 4. 85. Br. Averments 6. Fines 35. 13. H. 4. 10. 9 E. 3. 25. a. Plow. 435. 1 Leon. 83. Eſtop. 156. 2 E. 3. 6. & 19. Plow. 360. Jo. 36. 459. 3 E. 3. 57. 72. Averment 42.

pretend by the opinion of 4 [*E.* 3. 23. b. pl. 21.] & 11 & 42 *E.* 3. [9. a. pl. 8.] & 12 *E.* 4. [12. b. pl. 4.] & 8 *H.* 4. [7. a. pl. 12.] And DYER. SAUNDERS, MANWOOD, SOUTHCOTE, HARPER, and CATLYN, held the law clear to the contrary, and that by thoſe books: and that ſuch fine amounts to a feoffment of record, which makes a diſcontinuance of the remainder or reverſion &c. See in *formedon M.* 3. *E.* 3. [41. b. pl. 20.] where a ſtranger to the fine which was not executed *s.* by the words *come ceo que il ad* &c. but made a *conuſance de droit tantum* to the deforciant, and he granted and rendered to the conuſor in tail, was not received to aver *ne dona pas*, but was eſtopped by ſuch fine by the opinion of the Court, *Eaſt.* 42 [*E.* 3.] fol. 2. *in formedon*, and *H.* 50. in *Statham*, title *Averment*. (31) And ſee a good caſe of ſuch averment, *Eaſter*, 32 *E.* 3 title *Voucher* in *Fitzherbert* [pl. 96.] and debated at length; and at length the voucher granted upon voucher of himſelf for ſaving the entail, and the remainder in tail, and as heir to the conuſor, and aſſignee to the conuſee; but the Serjeant ſaid, that that was to avoid delay, and not by force of the law. And the caſe was, *s.* the baron and feme tenants in ſpecial tail have iſſue a daughter; the wife dies; he takes another wife, by whom he hath iſſue a ſon, and afterwards they levy a fine *ſur conuſance de droit come ceo que* &c. and take back an eſtate by the ſame fine in ſpecial tail, remainder over in tail, remainder to the right heirs of the huſband. Afterwards the huſband and wife die, the ſon enters, the daughter brings formedon, the ſon vouches himſelf to ſave the entail as heir of the conuſor, and aſſignee of the conuſee. The daughter averred continuance of poſſeſſion in the father &c. *without this, that the conuſee ever had any thing* &c. And by the better opinion ſhe could not. And the ſame caſe in effect is *in formedon E.* 42. [*E.* 3. pl. 8.] fol. 2. * where FINCH ſays, that neither privy nor ſtranger ſhall have ſuch averment againſt ſuch fine; and this was adjudged there very lately. And † *T.* 7. *E.* 3. in a writ of right, ſuch averment was tendered againſt ſuch a fine levied between ſtrangers, with a nonclaim of the demandant, then being of full age, out of priſon, and within the four ſeas; and it did not prevail, but there was adjourned. 32 *E.* 3. *Fitz. Voucher* p. 96.

14 E. 3. Dower 87. 6. H. 4. 61. 19 H. 6. 22.

2 H. 5. 11. a.

13 E. 3. Garr. 37. 32 E. 3. Vouch. 100. 13 H. 8 12. 19 H. 6. 22. per Newton. 6 E. 3. Averment 40.

9 E. 3. 31. 33. H. 6. 18.

6 E. 3. 20. a. 9 E. 3. 28. b.

Plow. 357.

*[334. b.]

7 E. 3. 251.

22 Aſſ. 45.

Trinity

Trinity Term. [334. b.]

16 Queen Elizabeth.

(32) IN an indenture of a leaſe for years there was a condition, or proviſo, that the leſſee ſhould not aſſign or aliene the premiſes or any parcel of them, without the aſſent of the leſſor. The leſſee by the aſſent of the leſſor alienes parcel, and afterwards he alienes the reſidue without his aſſent; and he for that re-enters into the reſidue. And it was doubted in *B. R.* whether he could do that, inaſmuch as he had diſpenſed in part with the condition, which is an entire thing, and upon the poſtea, *curia adviſatur* until this Term. And afterwards the entry of the leſſor into the reſidue was adjudged to be lawful, notwithſtanding the diſpenſation of part of the proviſo.

Leaſe on condition not to aliene the premiſes, or any part, without the aſſent of the leſſor; he licenſes the alienation of part, ſtill he may re-enter if the leſſee aliene the whole.

Fulb. Paral. Lib. 2. fol. 73. Dy. 70. 36. 4. H. 7. 6. 34. E. 3. a. B.N.C. 112. 4 Co. 120. econt. Co. 133. b. 5 Mar. 152. a. Noy 32. 1 Ro. Ab. 471. 14 Eliz. 309. a. 3 Cro. 816. Mo. 205. 15 Vin. Ab. 298. Shep. Touch. 155. Com. dig. Condition (Q.) all the caſes are contra.

Calthorpe's Caſe.

(33) SIR *Francis Calthorpe*, Knight, being ſeiſed of divers manors, lands, and tenements, in the counties of *Norfolk* and *Suffolk*, and of the manor of *Northmorton*, in the county of *Berkſhire*, having no iſſues of his body; and one *Edward Calthorpe*, his couſin and heir-apparent, *s.* the ſon of his brother, by indenture tripartite, made between the ſaid Sir *Francis* of the one party, and the ſaid *Edward Calthorpe* of the ſecond part, and one *Edmond Wyndham* of the third part, bearing date the 16 day of *January*, the 26 year of the reign of King *Henry* 8, did covenant with the ſaid *Edmond Wyndham*, that one *Edmond Calthorpe*, eldeſt ſon of the ſaid *Edward Calthorpe*, being then of the age of nine years, by the ſufferance of God, ſhould, before the Feaſt of *Saint Michael* the Archangel, in the year of our Lord 1540, * (which was ſix years after), marry with *Elizabeth*, the daughter of the ſaid *Edmond Wyndham*, if the ſaid daughter would thereunto agree.

Caſe of a conveyance by C. by eſtate executed with warranty to ſeveral uſes in conſideration of a marriage, which ſhould be had ſix years afterwards between a couſin and heir of C. and the daughter of another of the parties, but which marriage never took place, and C. afterwards married, and had iſſue.

See Moor 101. S. C. who puts ſeveral points as determined therein.

Ben. 114.

* [335. a.]

agree. And the ſaid *Edmond Wyndham* made the like covenant with them for his daughter, if the ſaid *Edmond Calthorpe* would thereunto agree. And the charges of the marriage and apparel to be at the ſeveral coſts and charges reſpectively of their fathers. In conſideration of which ſaid marriage to be had and ſolemnized, and other covenants, bargains, grants, payments, promiſes, and agreements, for and in conſideration of the ſaid marriage in the ſaid indenture afterwards ſpecified, the ſaid Sir *Francis Calthorpe* alone did covenant with the ſaid *Edmond Wyndham* alone, that he, before the Feaſt of *Saint Michael* the Archangel, then next enſuing, ſhould make, or cauſe to be made a good and ſufficient eſtate in fee ſimple of the ſaid manor of *Northmorton*, in the county of *Berkſhire*, and of all his lands and tenements in the counties of *Norfolk* and *Suffolk*, to *Richard Southwell* and others, and to their heirs, to ſuch uſes and intents as in the ſaid indentures thereafter enſued, *viz.* of the ſaid lands in *Suffolk* to the uſe of the ſaid Sir *Francis* and Dame *Elizabeth* his wife, for term of their lives, and the longer liver of them, without impeachment of waſte; and after their deceaſes and carnal copulation had betwixt the ſaid *Edmond Calthorpe* and *Elizabeth Wyndham*, then to the uſe of the ſaid *Edmond* and *Elizabeth*, and of the heirs of the body of the ſame *Edmond*, lawfully begotten upon the body of the ſame *Elizabeth*; and for default of ſuch iſſue, to the uſe of the ſaid *Edmond* in general tail, and for default of ſuch iſſues to the uſe of *Edward Calthorpe* his father in general tail, and for default of ſuch iſſue to the uſe of the right heirs of the ſaid Sir *Francis* for ever; and of part of the premiſes in the county of *Norfolk*, and alſo of as much lands, tenements, rents, and ſervices of the ſaid manor of *Northmorton* as ſhould amount to the clear yearly value of twenty marks, to the uſe of the ſaid Sir *Francis* and Dame *Elizabeth*, and the longer liver of them; and after their deceaſe to the uſe of the ſaid *Edward Calthorpe* for term of his life; and after his deceaſe and carnal copulation had betwixt the ſaid *Edmond Calthorpe* and *Elizabeth Wyndham*, then to the uſe of the ſame *Edmond* and *Elizabeth*, and of the heirs of the ſame *Edmond* in ſpecial * tail as is aforeſaid; and for default of ſuch iſſue, to the uſe of the ſame *Edmond* in general

* [335. b.]

general tail; and for default of ſuch iſſue to the uſe of the ſaid *Edward Calthorpe* in general tail; and for default of ſuch iſſue, to the uſe of the right heirs of the ſaid Sir *Francis* for ever. And of the reſidue of the lands in *Norfolk*, and of the reſidue of the ſaid manor of *Northmerton*, over and beſides the ſaid twenty marks, to the uſe of the ſaid Sir *Francis* and Dame *Elizabeth*, and the longer liver of them; and after their deceaſe, then to the uſe of the ſaid *Edward Calthorpe*, and of the heirs of his body lawfully begotten; and for default of ſuch iſſue, to the uſe of the right heirs of the ſaid Sir *Francis* for ever. And of the reſidue of the lands in *Norfolk* to the uſe of the ſaid Sir *Francis* only for term of his life without impeachment of waſte; and after his deceaſe to the uſe of the ſaid *Edward Calthorpe* in general tail; and for lack of ſuch iſſue, to the right heirs of the ſaid Sir *Francis* for ever. *Item* a proviſo, that if it ſhould happen the ſaid Dame *Elizabeth* to die during the life of the ſaid Sir *Francis*, that then the ſaid Sir *Francis* might at his pleaſure give or bequeath any of the premiſes (not appointed for the jointure of the ſaid *Elizabeth Wyndham*) to ſuch wife or wives as he ſhould fortune to marry, for term of the life or lives of ſuch wife or wives (ſo that the ſame did not exceed above the clear yearly value of fourſcore marks). And another proviſo alſo, that he by his laſt will might give or bequeath the iſſues or profits of ſome of the lands in *Norfolk* for term of twenty years, for payment of his debts and performance of his will. *Item* a covenant of the ſaid Sir *Francis* to the ſaid *Edward Calthorpe*, to ſuffer all ſuch lands as ſhould deſcend or come to him as heir to Sir *Philip Calthorpe*, immediately after his death to deſcend or come to the ſaid *Edward Calthorpe* and to the heirs of his body lawfully begotten, according to the old entails thereof had. *Item* a covenant of the ſaid Sir *Francis* to the ſaid Sir *Edward Calthorpe* only, to make further aſſurances of the premiſes within the ſpace of two years, as by the ſaid *Edward Calthorpe*, and at his coſts and charges ſhould be deviſed, according to the true intent and meaning of the covenants aforeſaid. *Item* a further condeſcent and agreement between all the ſaid parties, that the ſaid *Richard Southwell* and the

others

others, after ſuch aſſurance made unto them of the premiſes, ſhould, from * and after ſuch eſtate made from thenceforth, ſtand and remain ſtill ſeiſed, without making after that any eſtate to the ſaid Sir *Francis*, *Edward Caltherpe*, or *Edmond Caltherpe*, or to any other perſon or perſons, by matter in deed, or of record, whereby any uſe, right, intereſt, or title of the premiſes ſhould be extinguiſhed or altered (except it were by the full conſent of the ſaid *Edmond Wyndham*). And in conſideration of the ſaid marriage to be had and ſolemnized, as is aforeſaid, as alſo for the other covenants and agreements in the ſame indentures of the part of the ſaid Sir *Francis* to be performed, the ſaid *Edward Caltherpe* ſhould by the indenture pay 200 marks to the ſaid Sir *Francis*; which was all paid. *Item.* A covenant of the ſaid *Edmond Wyndham* to the ſaid *Edward Caltherpe* to pay him an hundred pounds at a day for the ſame marriage; and if the marriage took none effect, the ſame hundred pounds to be repaid again, as by the indenture more at large appeareth. And according thereto eſtates were executed by fine and recovery, had and ſuffered by the ſaid Sir *Francis* to the ſaid *Richard Southwell* and the other feoffees for the ſaid marriage, and of, for, and concerning the accompliſhment of the ſaid manor of *Northmorton* before *Michaelmas* then next enſuing; in which fine there was a warranty of the ſaid Sir *F.* and of his heirs againſt himſelf and his heirs; which recovery and fine afterwards were averred by the counſel in evidence to the jury to be to the uſes and behoofs contained in the ſaid indentures. And alſo the payment of the 200 marks; but no annual value of the ſaid manor of *Northmorton* was expreſsly declared in evidence by the counſel to the jury, nor mention of any election made by any perſon of the ſaid annual value of twenty marks; and that therefore the ſaid feoffees would ſtand ſeiſed of the eſtates aforeſaid to the uſes aforeſaid, until the ſtatute of 27 *H.* 8. [c. 10.] of transferring uſes into poſſeſſion was made. And after that, the ſaid Dame *Elizabeth* died, after whoſe death Sir *F.* took his wife, one *El. Barney*, and had iſſue by her one, *W. Calth.* who is now living; and that after this the ſaid Sir *F.* died, and the ſaid *E. Calth.* and *W. Calth.* both ſurvived him; and

The fine is T. 27. H. 8. of the manors of Lames, Redham, and Beckhall.

Dy. 302.

19 E. 2. Grants 93. 21 H. 7. 8. b. Co. Lit. 5. Dy. 281.

and that no marriage or carnal knowledge was ever had between the ſaid *Edmond C.* and *El. Wynd.* Now whether the uſes of the premiſes always continued, or were determined, ſo that the ſaid Sir *W. C.* as ſon and heir of the ſaid *F.* ought to enter and enjoy the premiſes as a fee ſimple, deſcended in poſſeſſion from his father; or that the ſaid *Ed. Calth.* and his heirs in tail, as in remainder after the deceaſe of the ſaid Sir *F.* ſhould or might enter and enjoy them, by virtue of the indenture, fine, and recovery aforeſaid, or not, was demurred in law upon the evidence given * upon the iſſue of not guilty in an *ejectione firmæ.* And it was argued at the bar *pro* and *contra*, but not at the bench; but it ſeems that the caſe is hard for *William Calthorpe*, the ſon of Sir *F. C.* And for the argument of the caſe, ſee theſe notes following:—Firſtly, A plain intention of all the parties, and a hope of a marriage to join the heirs and heritage of the *Calthorpes* to the blood of the *Wyndhams.*— 2. In conſideration of which, eſtates were executed to divers uſes; but to the perſons who ſhould be married, no preſent uſe appointed until marriage and carnal knowledge firſt had; which being done, the uſes to continue in their poſterities, and in the collateral line of Sir *Francis C.* and not in his lineal ſucceſſion. 3. Theſe eſtates and uſes never to be changed, altered, or extinguiſhed without the full conſent of *Edmond Wyndham*; which was never obtained. 4. A proviſo for a jointure of any wife of Sir *Francis C.* for term of life only; and another proviſo to declare his will for 20 years. 5. Money paid for remainders, and no preſent poſſeſſion. 6. The charges of aſſurance paid by the couſin and heir-apparent.

* [336. b.]

1 Co. 154. Mo. 309. 10. Co. 76. b. Finch. fo. 9. a Dy. 90. pl. 8. 1 Inſt. 204. a.

(34) A conſideration is a cauſe or meritorious occaſion, requiring a mutual recompenſe, in fact or in law. Contracts and bargains have a *quid pro quo.* Exchanges, annuity for counſel or ſervice, rent ſervices, and tenures for demeſnes of lands, as frank-almoin, frank-marriage, homage aunceſtrel, for warranty and acquittal, common for cauſe of vicinage or ſervice, demiſe of the wife, *cauſa matrimonii prælocuti* &c. Alſo the mode of giving *ad faciendum tale quid*, or *ut faceret tale*, *ad intentionem*, or *eâ intentione ut* &c. *ad effectum:* condition, conſiderations, executory, future, and continual, and conſiderations executed,

5 E. 2. Cui in vita 24. 2. 4 E. 3. 54. 11 H. 6. 2.

cuted preſent, done and determined on one part. Feoffment to inſtruct the feoffor in a myſtery or art, the feoffor dies before inſtruction, the heir ſhall not re-enter, 21 E. 3. [11 b. pl. 2.] Grant of an office, and for the exerciſing of it a fee, the office being determined, the fee determines [*ante* 259. a pl. 18.] *M.* 5. *E.* 4. 7. [8. b. pl. 1.] & 20. E. 4. [12. a. pl. 15 18. b. pl. 8.] an uſual or accuſtomed attendance of a corodian upon the ſuperior of the monaſtery upon feſtivals not performed, determines the corody, it being a reward for the attendance; but a leaſe of it to the ſuperior ſuſpends that. Exchanges, not executed on each part at firſt, are defeaſible, 9 E. 4. [38. pl. 17.] A portion of tithes granted by indenture for ever, without challenge or contradiction &c. And an annuity granted for the portion aforeſaid &c. Alſo, a compoſition by the ordinary between two abbots for tithes in variance; the one to have the tithes in fee farm, the other to pay annually 20*s.* "*as long as he ſhall have and perceive them*, the tithes are refuſed for the 20*s.* * yet the 20*s.* remain; difference when the conſiderations precede the gift and *contra*: and when it is expreſſed by one man and in a deed, and when by another man in a deed &c. *H.* 8. H. 6. [23. b.] Alſo to have a way for my life, I give an annuity of 20*s.* without limiting how long the rent ſhall laſt that is only during my life &c. Alſo a termor by indenture in conſideration of 10*l.* to be paid at the next *Midſummer* granted his term, he failed of payment &c. he may not rehave his term, being no condition therein. The like is 21. H. 7. [6. pl. 4.] of a bargain of *ceſtui que uſe*, no day appointed for the money, the uſe paſſed clearly, and the vendor put to his action for the money. (35.) Alſo a rehearſal of a conſideration paſt, whether it be true or falſe does not diſſolve the gift as, *becauſe he ſerved me in the wars abroad, I have given* &c. although it be falſe is not material, by *Bracton*, *in mediis denationum* even in the caſe of the king, according to *Fitzherbert* E. 26. H. 8. in the end of a traverſe, fol. 1. And in *Feb.* 18. *Eliz.* the title was determined by the award of the two Chief Juſtices, and an annuity of 30*l.* in tail, and alſo of 10*l.* during life to the *Sheltons*, the father and ſon; and 180*l.* in money were given by the *Calthorpe* lineal

Dy. 329. 20. E. 4 10. a.

14 H. 8. 20. a. 2 E. 3. 33. 24. E. 3. 54 9. E. 4. 19, 20. 39. Plow. 134. b.

* [337. a.]

Dy. 76. 9 E. 4. 21.

Perk. 60. a.

3 H. 6. 7. a, 20 H. 6. 35. b.

Dy. 169. pl. 22.

Plow. 455. a. Dy. 352.

lineal heirs for redemption of the title of *Sheiton*, one of the coheirs of *Ed. C.* &c.

Humfreſton's Caſe.

(36) THE manor of *Humfreſton* was conveyed by one *W. Humfreſton* to make his wife a jointure, by a deed in Latin, made by his recoverors, to himſelf and to his wife for term of their lives, the reverſion *ſeniori puero* of the body of the ſaid *W.* and the heirs of his body lawfully begotten, remainder thereof to the huſband in tail general, remainder over to one *Kinerſley* in fee &c. And afterwards by indenture between him and the ſaid *Kinerſley*, in *Engliſh*, he covenanted that he and his wife ſhould levy a fine to *B.* and *C.* to the uſe of himſelf and his wife for term of their lives, remainder to the uſe *of the eldeſt child* of the ſaid *William*, and of the heirs of the body of ſuch eldeſt child, remainder over as before; and the fine was levied accordingly. And afterwards the wife died without iſſue; the huſband took another wife, and by her had iſſue a daughter the eldeſt, and a ſon the youngeſt: Which of the two ſhall have the remainder, was demurred in law in *B. R.* and argued this term, and in the term of next *Eaſter*; where by the opinion of SOUTHCOTE and WRAY, *Chief Juſtice*, the daughter and not the ſon ſhall have the remainder; for that was the intention of the anceſtor as they thought, although *puero* in Latin is intendable rather of the male ſex than of the female; and yet many authors and writers in the law have taken the word indifferently for either gender &c. and the eldeſt child is the daughter &c. but GAWDY *e contra.*

H. conveys by Latin deed *ſeniori puero* of his body, and afterwards levies a fine to the ſame uſes, which is done to the *eldeſt child. Puero* ſhall now be conſtrued of either ſex, and an elder daughter ſhall take before a younger ſon.

[Bendl. 195. 1 And. 40. 2 Leon. 216. Ow 64. And. Ben. 29. Mo. 103.] S. C.

Coke 103. b. 133. 4 Mar. 133. b. Davis 35. 1.

9 H. 6. 24. a.

Opinio 47. E 3. 16. Fooſſments 56. Hob. 32. 5 E. 6. B. N. C. 415.

Bendl. 193 accord. Vide 30. Aſſ. 47.

[Co. Lit. 176. b. & Mr. Hargrave's note (3) there.]

* Brooke *againſt* Maſon.

[337. b.]

(37) A Diſſeiſor of lands in three vills *ſ. A. B.* and *C.* in one and the ſame county, levied a fine with proclamations of the land in *A.* to the uſe of a ſtranger who entered,

Diſſeiſor of lands in A. B. and C. all in one county, levied a fine of thoſe in A. Entry of

3 S 2

(37) *Mich.* 42. 43. *Eliz. B. R.* between † *Goodman* leſſee of Sir *Thomas Pope* and *Gerners* leſſee of *Trapps*, upon evidence in *ejectione firmæ* it was ruled by the Court, that if a diſſeiſor &c. make ſeveral leaſes of parcels *ſ.* of divers meſſuages for years to ſeveral perſons, the entry into one in the name of all is good for all; otherwiſe it is if the leſſees were for lives; and ſo in

the diſſeiſee into B and C. in the name of all, will not ſerve for thoſe in A.

* [Bendl 207.] Ben. in Keilw 213 a 1. And 28. N Ben. 14. } S.C.

[Vin. Ab Entry (B) 2 Bac. Ab. 431

Co. Lit. 252. b. Mo. 450. 1 Leon. 36, 52. 11. Eliz. 283. a. 30. Aſſ. 16.

Lit. ſect. 417. 12 H. 7. Cro. 20. 15 Eliz. Ben. 22.

entered, and was ſeiſed accordingly. And afterwards the diſſeiſee within the five years aſſigned one authorized by his letter of attorney to make entry into all the lands in *A. B.* and *C.*; and the attorney made his entry into *B.* and *C.* only in the name of all lands in *A. B.* and *C.* And upon an iſſue joined, whether the diſſeiſee ſhall enter into the land in *A.* or not, this matter is found by ſpecial verdict in treſpaſs brought in *A.*: but the jury did not ſay expreſsly in their verdict, that ſaid vills of *B.* and *C.* are in the ſame county, nor in what county they are. But the opinion of the Court was, that the entry is not ſufficient for the lands in *A.* becauſe *ceſtuy que uſe* who is the conuſee by the fine, is in by title &c. Wherefore the plaintiff had judgment to recover accordingly. 9. *H.* 7. 45. [25. b.] agrees.

in *B. R.* in the ſame term it was ruled between † *Dalton* leſſee of *Hubbert* and *Hammond Browne*, that if there be ſeveral leſſees of ſeveral parcels claiming under one title, entry upon one parcel in the name of all is good for all. *Hil.* 22. Jac. Rot. 133. and adjudged *Eaſt.* 1. *Car. B. R. Lady Argall* and *Cheeyne's* caſe [Pal. 402. Lat. 71.] in *ejectione firmæ*, three ſeveral parcels of land in one county, *Lady Argall* leaſed them to three ſeveral perſons who brought the action, and the term was in three ſeveral leſſees of *Cheyney*, the lady made a leaſe and delivered it as an eſcrow to *J. S.* and made a letter of attorney to *J. S.* to enter in her name into all, and to deliver the deed to her leſſees as her deed, and he entered upon one leſſee in the name of all the land, and JONES, DODRIDGE; and CREW, That it is good, becauſe the freehold is in one only, and becauſe in the ſame county

Trin. 22. Jac. Rot. 103. and adjudged *Eaſt.* 1 *B. R. Caly* v. Sir *William Fiſh* [Noy. 77. Lat. 82.] ejectment of one cloſe, is ejectment of all.

Land is given to a parſon, and his ſucceſſors to find lights in the church; he leaſes, and with the rent finds &c. till 1. E. 6. c 14. Acceptance of the rent by his ſucceſſor after that ſtatute is void, and a patentee of the king may enter.

N. Ben. 29 Dy. 252. a. Hob. 123, 243. 5 Co. 110. b. 22 Eliz. 308. b. 3 Leon 158. Coke 51. a. 7 Co. 8. a. Raſt. Monaſter. 13. Dy. 51. pl. 17. 240. pl. 22.

[Dom. dig. Uſes (M.)]

(38) LAND was given to a parſon of a church and to his ſucceſſors, parſons there, to find thereout common lights and torches in that church for ever. And in the 28th year of H. 8. the parſon there made a leaſe of it to one for term of life, reſerving a rent to him and his ſucceſſors. This rent was employed to find the lights until the ſtatute of 1. *E.* 6. [c. 14. § 5.] concerning the diſſolution of chantries, obits, lights &c. And after the ſtatute the ſaid parſon received the rent of the ſaid leſſee. And now lately the queen hath granted the lands by letters patent; after which grant the parſon died; and after that the patentee entered upon the leſſee. In treſpaſs, upon a ſpecial verdict upon not guilty pleaded, it was doubted whether the entry was lawful or not. *Quære* of the ſaving of the act of 1. E. 6. And afterwards in the end of the term the opinion of the Court was, that the entry was lawful as well for the queen, or her patentee, as it would have been

been for the ſucceſſor, if the act had not been made; and judgment was giving accordingly. And the acceptance of the rent before, by the parſon, was void, for then he had not any reverſion in him.

Wotton *againſt* Cooke.

Hil. 16. *El.* rot. 925.

(39) A WRIT of covenant was brought by *T. Wotton* as ſon and heir of Sir *E. W.* knight, upon an indenture tripartite made between the ſaid Sir *E. Wotton* of the one part, and Sir *A. C.* Knight of the ſecond part, and Maſter *Danet* of the third part, coheirs to Sir *E. Belknap*, Knight, reciting, That whereas they held divers lands in coparcenary, and alſo whereas they at their equal and common charges had purchaſed divers other lands in fee, to the intent that they and each of their heirs ſhould have and enjoy one juſt third part of theſe lands, as well as of the lands in coparcenary, each of them covenanted and granted *to the others, their heirs and aſſigns et eorum utrique*, to make ſuch conveyance of the third part, to the heirs of them who ſhould firſt chance to die as ſhould be * deviſed by them, and at the coſts and charges of the deviſor &c. And ſaid in fact, that the ſaid Sir *E. W.* Sir *A. C.* and Mr. *Danet* purchaſed a rectory and a manor in the county of *Warwick* to them in fee, and that Sir *E. W.* and Mr. *D.* were dead, and *Cooke* ſurvived them, and was ſeiſed of the whole in fee by ſurvivorſhip; and further ſaid, that ſince their deaths, *T. W.* the now plaintiff at ſuch a place in *Kent*, tendered a writing indented, containing in it a bargain and ſale for 10 *s.* paid, and other conſiderations of the third part &c. deviſed by himſelf, and at his coſts, to the ſaid plaintiff and his heirs, to be ſealed and delivered as his deed, to the intent that it ſhould be afterwards enrolled &c. to do which Sir *A. C.* refuſed, and ſo broke the covenant &c. And the defendant traverſed the tender; and by a jury of *K.* it was tried for the plaintiff with damages 2000 *l.* And in arreſt of judgment it was moved, that the time and perſon of the vendor of the lands purchaſed ought to be alleged certainly. Alſo that the word *utrique* in Latin, is *conjunctim*, and

Three purchaſe jointly in fee, and covenant each *with the others and their heirs, et eorum utroque* for the ſurvivor to make ſuch conveyance to the heirs of the others as they ſhall deviſe. This covenant is peremptory on the ſurvivor, and tho' not annexed to the land, goes to the heir, who on tender of a conveyance, and a refuſal to execute it, may immediately ſue, either in the county where the lands lie, or where the tender was made: and the time of the original ſale, or name of the vendor need not be mentioned in the declaration

[Bendl. 228] [Jenk. c. 6. 24. 1 And 53] S. C.

Bendloſe ca. 88. fo. 45. 5 Co. 8. 18.

* [338. a.]

10 E. 3. 21. 9. H. 6. 45. Dy. 310. pl. 80. 3 Cro. 834. 5 Co. 19. a. 103.

and not *ſeparatim*, but the word ſhould be *alter eorum*. Alſo that this action does not lie for the heir, becauſe the covenant is not annexed to the land &c. but is a perſonal covenant, and given to the executor, and not to the heir &c. Alſo the plaintiff hath alleged in the count the purchaſe of the ſaid lands in the county of *Warwick* to be in *Kent*, which is not intenible. But notwithſtanding this judgment was given by the Court for *Wotton* on the laſt day of term, but with ſtay of execution &c. until it is granted by the Court. And in truth the tender of the indenture, and the refuſal was in *Weſtminſter-Hall*. And Sir *A. C.* required time to ſhew that to his counſel to be adviſed thereupon; but this was not allowed, for the covenant was peremptory *s.* to be performed immediately at his peril. And alſo that *T. Wotton* was at his liberty to bring his writ of covenant in *Kent* or *Middleſex*. And in the next term Sir *A. C.* brought a writ of error; but the aforeſaid judgment was affirmed in *B. R.* in *Hilary* Term, 17th of the now Queen.

11 H. 6. 51. b. 2 H. 4. 6.

[See 1. Br. Ch. Caſ. 364]

Fitz. 145. 5 Co. 17, 18 Br. Covenant 49

13 E. 9 Account 3. 56. 4 Leon. 190.

1 Ro. Ab. 424. Dy. 14. a. 2. Co. 3. b.

[1 Wood Conv. 451. but ſee Cro. El. 9 Cro. Car. 29.]

3 H. 4. 4.

26 H. 6. Covenant 19 B. Liew. 76.

A waif happens in one franchiſe, and before ſeizure ſtrays into another, the ſecond lord ſhall have it

5 Co. 109 a. Hutton 67, 68. Co. Lit. 351. 12 H. 8 10. Br Eſtray 11. B. N. C. 217.

(40) SHEEP ſtolen are driven by the thief, in the night, into a franchiſe which hath waifs; where the thief with the ſheep lighted upon travellers, *s.* birders, who upon ſome converſation ſuſpected him, and ſaid, they would have him, with the ſheep, go with them to the town; but he upon this fled, and waived the ſheep; and they followed him, but could not take him for the darkneſs: and in the mean time the ſheep ſtrayed into another franchiſe which hath eſtrays, where they are ſeiſed by the bailiff as eſtrays: and no ſuit or claim is made by the owner within the year and day:—*quære* to which of the franchiſes the ſheep are forfeits? And it ſeemed to GERRARDE, Attorney General to the Queen, Juſtice of Aſſize within the counties of *Huntingdon* and *Bedford*, with CATLYN, Chief Juſtice, then abſent on account of ſickneſs, that the ſheep ſhall be forfeited to the Lord of the franchiſe * of the waifs, notwithſtanding

F. Nat 91 b. B. N. C 417, 217. 12 E. 4, 5. b. Br. Eſtray 8. R. 77. 10 H 7. 6. b. 21 E. 4. 16. Fitz. 91. b.

(40) *Noy*, Attorney-General affirmed that the book of F. Nat. 91. and others which ſay, that he who has the manor ought to have a writ of treſpaſs for them, and that without any ſeizure, ſhould be underſtood of treſpaſs on the caſe, as appears by the book of *Entries* where title is made. [1 Term Rep. 480.]

the

the non-ſeiſure, for by the waiver alone, without ſeizure, they ſhould be forfeited to the Queen, if no franchiſe had been granted: and the ſame liberty hath the Lord of the franchiſe &c. But the opinion of CATLYN afterwards was contrary; and that without ſeizure no property is changed by the waiver &c. except in the caſe of the King by prerogative. And in the Book of *Entries*, fol. † 611, good pleading in treſpaſs for goods waived within the ſanctuary of *St. Martin le Grand London.*

[So of the property of outlaws. 5 Term Rep. 113, 114.]

[Raſt. Ent. 682, 683.]

Michaelmas Term,

From the Morrow of All-Souls.

16 & 17 Queen Elizabeth.

(41) IF an infant plaintiff by *prochein amy*, after his full age make attorney, and afterwards be nonſuited, he ſhall be amerced: yet if he had been nonſuited before his full age, he ſhould not have been amerced, becauſe he is within age; by the opinion of *Fylmer*, Prothonotary, and of the Court.

An infant ſuing by *prochein amy*, on nonſuit, ſhall not be amerced: *Sems* if on coming of *age* he make attorney. [Jenk. Cent 6. c. 54.] Fitz. 27. h. R. 505. Br. Amerce. 43. 61. 30. Aſſ. 18. 5 Co 49. a. 8 Co. 61. Ro. Abr. 214. (L) 6, 9. 1 Bulſt. 172. 1 Inſt. 126. b. 2 Keble 698. [Cro. Car. 410. 1 Mod. 47. 296.]

(42) AT *niſi prius* twelve of the panel appeared, and not one of them was of the hundred; wherefore all the twelve upon challenge were [found] out of the hundred: whereupon the plaintiff praved a *tales de circumſtantibus* hundredors, and had it; and four hundredors returned and ſworn, and eight firſt of the principal panel in order ſworn alſo, and found for the plaintiff. It was moved in arreſt of judgment, that this trial was not legal and ſufficient according to the ſtatute of 35 *H.* 8. c. 6. See the like *M.* 7 & 8. *Eliz.* fol. [245. a. pl. 64.] *Salop.* between Lady *Maltravers* and *Powel.*

All the hundredors of a jury returned on a *tales*, and added to the principal panel—*qu.* if good? 10 Co. 103, 104. Raſt. Jurors 17 Dy. 200. b. [See note (a) to fol. 25. a. pl. 156 ante.]

(43) A

East 16. Eliz. rot. 1511.

A prebendary makes a leaſe for 70 years, the Biſhop and Chapter confirm *the demiſe aforeſaid quoad* 51 *years*, it is certainly good for that time.

[Bend 238.] 1 And. 47. } C. C.
See 3 Co. 81. a.
[ante 52 b. pl. 4.]

5 Co. 75. a.
34 H. 8. 52. b.

(43) A Prebendary of *Sarum* made a leaſe for ſeventy years: and the Biſhop being patron and ordinary, and likewiſe the Dean and Chapter, confirmed the leaſe for the term of 51 years next enſuing only, and no more. And the ſucceſſor, pretending the leaſe to be void by the death of his predeceſſor, entered upon the leſſee within the 51 years, upon which there was a demurrer in law. The effect of the words of the ſeveral confirmations were thus, *ſ.* "And we *I.* Biſhop of *S* and the "Dean and Chapter, the demiſe aforeſaid, and all and "ſingular in the indenture aforeſaid contained (as to 51 "years next to come, and no longer) ratifying and "agreeing thereto, our aſſent and conſent do expreſsly "give; and we do approve and ratify them ſo qualified "for the ſpace of the ſaid 51 years only and no longer, by "the tenor of theſe preſents &c." This † *leaſe*, by the opinion of all the Court, during the 51 years is not diſputable, but * the confirmations for that time are good and ſufficient; but after thoſe years it may be queſtioned whether they are good for the entire term of 70 years, or not? Wherefore judgment was given without any argument at the bar or bench accordingly, except GEFFREY, who was of opinion, that the confirmations were clearly void in the whole, becauſe the demiſe for 70 years was not confirmed.

* [339. a.]
5 Co. 79. 81, 82.

[This leaſe appears by Bendlow, Anderſon, and Coke, to have been made before El. c 19. which ſee, and 2 Bl. Com. 317. &c. 3 Bac. Ab. 384.

† Orig. *caſe*.

Blackallar *againſt* Martine.

A tenant for life, remainder to B. for life, remainder to in tail, remainder to B. in fee; if A. and B join in a feoffment by deed, it is a forfeiture of both their life eſtates, and C. may enter immediately.
Eaſt. 15 El. rot. 214. according to Bendl. [222] } S C.
1 Leon 262.
1 And. 45
N. B n. 32.
1 Co. 7. b. Hob. 227.
Co. Lit. 302. b. 251. b.

(44) TENANT for term of life, remainder for term of life, remainder in tail, remainder to the right heirs of the tenant for life in remainder. The two tenants for life join in a deed, by which they gave, demiſed, and confirmed &c. in fee, which is executed by letter of attorney: and he in remainder in tail entered for the forfeiture in the life of the remainder-man for life: and whether the entry was lawful, was moved upon a ſpecial verdict in *ejectione firmæ* by *Blackaller* againſt *Martine*. And the opinion of the Court was, that the entry of him in remainder in tail is lawful, living he in the remainder

for

for life; for by ſome books *s.* 29 *Li. Aſſ.* 40. [64. & 45 & + 50 *Li. Aſſ.* he cannot enter for a forfeiture upon the feoffee of the tenant for life, becauſe he hath not an eſtate of inheritance &c. And a good caſe like this in 2. and 3 *H.* 4. [9 pl. 5.] & 50. *E.* 3. [4. a. pl. 6.] in waſte; and in the caſe above he in remainder for life joined in the livery of ſeiſin with the tenant for life, therefore *particeps criminis*, for ſuch feoffment is tortious and injurious to them in reverſion or remainder; for if the leſſee for life of a diſſeiſor make a feoffment, and the diſſeiſee releaſe to the feoffee, the entry of the diſſeiſor for the forfeiture is not lawful by *Littleton.* [111.]

Dy. 12 b. 1 L on 6. 2 And. 6 . 50 E. 3. 4. a. 3 Keble 634. 2 Co. 51 41. Aſſ 2 4 H. 7. 17. b. 24 E. 3. 70. 2 H. 4. 16 a. 28. 13 H 7. 14. a. 3 H. 4 36 5 E 3, 4. 41. E. 3. 16. 1 E. 3. 68 Br. Waſt. 56. Keb. 77. Lit. 4 4 [. Term Rep. 738. and of ſuch fort itures, ſee Vin. Ab Eſtate (I. b.) 3 Com. dig 376, 377. and Lac Ab Eſtate(C) per tot.']

(45) ONE had common appendant to his tenement in a great waſte; the lord improves part of the waſte, leaving ſufficient common and road thereto in the waſte: and afterwards he enfeoffs the commoner of the improvement. That does not extinguiſh the common in the reſidue of the waſte, by the opinion of the Court in *C. B.*

The lord improves part of the waſte, and enfeoffs one who has common appendant, of the improvement, it does not extinguiſh his common in the reſidue. 4 Co 38. a. Stat. de Merton Cap. 4. 11 H 6. 22. a. 8 Co. 106. a. 2 Inſt. 87.

(45) 29 *El.* in the caſe of *Kempſon* [1 Leon 42 Gouldſb 53 1 And 159.] who had common in a large field where many men had land, and he purchaſed an acre of one of them, by which it was adjudged that all his common was gone

40. *El.* it was ſaid the reaſon of this caſe was becauſe the land improved is utterly diſcharged of common in *C. B. Miſh.* 39, 40.

Hilary Term,

17 Queen Elizabeth.

An adminiſtratrix ſues a debtor of the inteſtate, pending which ſuit another by covin, procures a ſecond adminiſtration to himſelf jointly with her, and after judgment releaſes to the debtor, on which he ſues *audita querela*, in the mean time the ſecond adminiſtration is revoked; this releaſe is of no avail.

* [339. b.]

Dy. 294, 318. pl. 15. 6 Co. 19. a 20. 8 Co. 133. 143. b. 1 Co. 76. a. Dy. 327. 2 Keb. 12. 4 H. 7. 14. b 8. Co. 143. b. 48 E. 3. 1. 12 H. 4. 7. 16. E. 3. Proceſs 163. 1 Co. 96. Dy. 193. b. 294, 297. 3 Leon. 48. R. 139, 141, 474. 3 Co. 78. 6 Co. 19. 8 Co. 135. b. but otherwiſe if the letters of adminiſtration had been only repealed. 3 Cro. 460.

[1 Com dig. 264. and ſee the caſe of Hudſon and Hudſon. 1 Atk. 460.]

(46) THE huſband died inteſtate, the wife ſued and had adminiſtration committed to her alone, and afterwards took another huſband, and they recovered in debt as adminiſtratrix againſt a debtor of the inteſtate; pending which ſuit the ſon of the inteſtate, by fraud and covin between the debtor and him, obtained another * letter of adminiſtration to the wife and him jointly, (no cauſe of revocation or annulling of the former letters inſerted or ſhewn in the ſecond letter). And after judgment, the ſon by covin and fraud to defeat the execution, releaſed to the debtor all demands and executions. And afterwards the huſband and his wife ſued execution: and the debtor upon this releaſe ſued an *auditâ querelâ*, directed to the Juſtices of the Bench, and there had a *venire facias* againſt the huſband and wife, directed to the ſheriffs of *London*, with a *ſuperſedeas* therein to ſtay execution; and found two ſufficient mainpernors to proſecute with effect, and to anſwer for the debt or the body &c. The ſheriff returned *nihil habent* &c.; and then they appeared and pleaded the matter above of the covin, and a revocation of the ſecond letters of adminiſtration by ſentence exemplified under the ſeal of the ordinary, pending the *auditâ querelâ* &c. And upon that the parties demurred: and all the Court againſt the plaintiff, and ſo adjudged in *Michaelmas* next without any argument.

The Queen *againſt* the Biſhop of Bath and Wells, and Lancaſter, Clerk.

The queen preſents one whom the biſhop refuſes, and pending a ſuit for his admiſſion, another *by fraud in de-*

(47) THE vicarage of *Yatton*, in the county of *S.* being of the patronage and gift of the prebendary and parſon of *Yatton* became vacant, and remained void for two years;

(47) If the King preſent one to a benefice, and before admiſſion, the King preſent another, without fraud or covin in the ſecond preſentee, that is a good revocation of the firſt preſentment,

years; by reaſon whereof title of lapſe appertained to the Queen, by reaſon of her prerogative and ſupremacy. And the Biſhop of *Bath*, as ordinary, made collation by lapſe to one *L.* And afterwards the Queen preſented one *Price*, and the Biſhop would not admit him; wherefore he ſued a *quare impedit* againſt him and the incumbent; and pending the writ, *L.* obtained by fraud and deceit a preſentation of the Queen, without making any mention of the pleaſure of the Queen to revoke or repeal the firſt preſentation. And afterwards the Queen certified us by her letters ſigned &c. that ſhe had forgotten the firſt preſentation, and ſaid that her pleaſure was that the firſt preſentation ſhould ſtand firm. And whether the ſecond patent of preſentation (obtained by fraud, and without expreſs mention of the pleaſure of the Queen) be ſufficient to avoid the firſt, or not, *quære*. See the ſtatute of the 6 year of *H.* 8. c. 15. where the former patent was *durante bene placito regis*, the laſt patent ought to recite the tenor of the former, and the pleaſure of the King to be determined. And in next *Eaſter* Term judgment was given for the Queen, becauſe the fraud and deceit done to the Queen and Court pending the writ, was confeſſed by the demurrer by *L.* altho' the notification thereof by letters † *patent* under the great ſeal was not made &c.

cit of the queen procures a preſentation for himſelf in which is no mention of her revoking the firſt preſentation, this no revocation of it. [Bendl, 265. S. C.] 1 And. 38. Dy. 277, 55. 2 Rol. Ab. 182, 190, 183, 354. 1 Ro. Rep. 236, 465, 467. R. 116. Mo 401. 6 Co. 29. b. 14 E. 4. 2. 25 E. 3. 47. a 5 H. 4. 32. a. 16 El. 327. b. 3 Co. 78. b. Dy 292. a. Regiſter fo. 302. Raſt. Patent. 11 b. 27 H. 8. 28. Dy. 87. pl. 102. [Wats Clerg L. 224, 225. Com dig. Eſgliſe (H. 10.) 3 Mod. Ent. 85, 86.]

ment, without expreſs clauſe in the patent of the repeal; but if the firſt preſentee be admitted, and inſtituted, then ſuch ſecond preſentation is not a repeal of the former, without recital of the former preſentment, and the admiſſion and inſtitution thereupon; and alſo there ought to be an expreſs clauſe of the revocation of the ſaid firſt preſentment, and of the admiſſion and inſtitution thereupon mentioned in the ſecond letters patent of preſentment; and this difference was adjudged *Eaſt* 9 Jac. in the Exchequer between *Calvert* and *Kitchen* [Lane 71. 100.]

If the King preſent and afterwards die before inſtitution, that is a revocation in law of the preſentation. [Lane, *ubi ſup.*]

† Orig. *nient.*

Brent's Caſe.

(48) A Feoffment was made after the ſtatute of 27 *H.* 8. [c. 10.] to divers perſons, to the uſe of *D.* the wife of the feoffor for the term of her life; and if the feoffor ſurvive his wife, then to the uſe of the feoffor himſelf, and of ſuch perſon as he ſhould chance to marry, for the term of their lives, and to the intent that ſuch perſon ſhould have it * for her life for jointure, the remainder over in uſe to a ſtranger in fee &c. afterwards he in remainder in fee with the feoffees, by conſent and privity of

After 27 H. 8. A. makes a feoffment to the uſe of his wife, and if he ſurvive her, to the uſe of himſelf, and ſuch woman as he ſhall afterwards marry for the term of their lives, remainder to B. Such ſecond wife ſhall take in jointenancy with him, though they come to their eſtates at different times. But if before the ſecond mar-

riage, B. and the feoffees with the aſſent of A. (who levies a fine accordingly) enfeoff to new uſes, after the death of A. and five years after the fine, whether the ſecond wife may enter with the aſſent of the feoffees to reviſe the firſt uſe—*qu.* [See Poph. 76.]

of the feoffor himſelf, joined in a deed of feoffment to divers new feoffees by lette. of attorney to other uſes ſ. to the uſe of the feoffor himſelf and *D.* his ſaid wife, for their lives, the remainder over to one *A.* in tail, the remainder in fee to the feoffor himſelf. After which feoffment the huſband levied a fine with proclamations to other uſes. And afterwards the wife died; the huſband took a ſecond wife, and died; the ſecond wife by the aſſent and command of the firſt feoffees after the five years paſſed ſince the fine, entered to raiſe the uſe mentioned in the firſt feoffment to the ſecond wife. Whether this entry be lawful or not upon evidence in *ejectione firmæ* was demurred in law. And it ſeemed to MOUNSON and HARPER that entry was lawful. And they held that it is not neceſſary for the ſecond wife to have the aſſent or command of the firſt feoffees, for they are quite excluded from all manner of right or intereſt in the land by the ſtatute 27 *H.* 8. which veſts all the eſtate and title that the feoffees have in the *ceſtuys que uſe* in ſuch manner, form, quality, and condition as the uſes are; and that this poſſibility of a future uſe to the ſecond wife is reſerved, and preſerved in the cuſtody of the law; and that if any thing be left in the feoffees, it is but a power and authority to make an entry only, which is not an intereſt in right in the land, and then it follows in conſequence that nothing paſſed by their feoffment in the new feoffees. But MOUNSON thought, that if they had title or right of entry to revive the uſe ſuſpended, then the feoffment will be an impediment to the entry, notwithſtanding the attorney, and they were diſſeiſors to the particular tenant for life; which HARPER denied. (45 But MANWOOD and DYER aſſented to the opinion of MOUNSON according to a precedent in the time of queen *Mary* [*ante* fol. 131. a.] of the demeſnes of the Abbey of *Combe*, in the county of *War.* which are enjoyed at this day by the Lady *Mary*, the wife of *E. Umpton*, Knight, in jointure; where the caſe was, that he in reverſion or remainder in fee, by deed with letter of attorney, enfeoffed a ſtranger in the abſence of the tenant for life, who never attorned or aſſented, but occupied it during his life; that was holden a good feoffment enough for the fee ſimple; and to that afterwards agreed WRAY, Chief Juſtice, and SAUNDERS

2. Leon. 14. S. C. 2. Leon 68. 2 And. 198, 199. 1. Aſſ. 11. Co. 101. a. 128, 34, 136. Co Lit 326. Co. 3. b. 101. a. Rol contin. 337. 4. Leon. 134. Dy. 274

1. Co. 101.

1. Co. 134. b.

1. Co. 128. a. [Fearne cont. rem. 219.]

[1 Bur. 96.]

46 E. 3. 30. 5 H. 7. 6. a. Lit. 13. Co. Lit 48, 50, 52. b. 2. Rol. Ab. 4, 8. 1 Keb. 800.

SAUNDERS Chief Baron, although at another time he thought otherwiſe. And the opinions of MANWOOD and DYER were, that although the future uſe was in abeyance, and *in nubibus*, and in no perſon certain, or perſon known, yet when the contingency happens, and the uſe alſo, it is neceſſary that the feoffees enter to raiſe this laſt and dead uſe, for they were the perſons put in truſt by the feoffor who created the uſe; and the feoffment and eſtate that the feoffees accepted was the very root and foundation of all the ſaid uſes, which are as branches and fruit of the body or bulk of the tree. And if ſuch feoffment to the uſes before had been antecedent to the making of the ſtatute, and alteration of the uſes in being by * the particular *ceſtuy que uſe*, and that the fee ſimple of the uſe had not been made, but the feoffees continued in their eſtate, and truſt after the ſtatute made; there after the death of the particular tenant the feoffees needed not to make ingreſs and egreſs in the lands to awaken the dormant uſe as in caſe of alienation and feoffment of the *ceſtuys que uſe* &c. but there the ſecond wife of her own authority might enter; but the caſe above is otherwiſe, and a change and diſturbance of the uſes; and this by the aſſent and will of the firſt feoffor and founder of the uſes, and of the feoffees in truſt to the ſame uſes. And at common law the feoffees ſhall have power ſufficient to alter, change, and diſſolve the uſe and truſt by their alienation and limitation, and no remedy for the land; but by ſubpœna in conſcience to make recompenſe or receive puniſhment for the breach of the truſt, wherefore &c. And although it be done to perſons having notice of the firſt uſe, ſo as it be upon conſideration, and the uſe expreſſed contrary to the firſt uſe; but yet *quære* of this. But here the caſe is not ſtated, that the new feoffees had any notice of the former uſes: and when the new feoffment was made to new uſes by the will and aſſent of the feoffor himſelf, and his feoffees alſo, no injury was in anywiſe done to the ſecond wife, who was not in being, nor a perſon at that time known. And although by the words of the ſtatute, the freehold of the land, and the fee ſimple alſo which the feoffees receive, are deemed and veſted in the *ceſtuys que uſe* before, yet there ſtill remains ſome ſcintilla of right and title, as ſome medium between both ſtates, *s.* that poſſibility of a future

Co. 128. a.

* [340. b.]
1 Co. 128, 136.
3 Keb. 178.
Mo. 391.

14 H. 8. 6. a.
Dy. 9. b.

Dr. St. 96.

1 Co. 136. a. 130. b
139. b.

Co. 109, 132, 101
2 Sid. 99.

future emerging uſe, and ſo an intereſt and title, and not only a naked authority or power remains, wherefore &c. (50) And for the firſt queſtion of this caſe *s.* Whether the feoffor, who reſerved the uſe to himſelf and to the wife which ſhould be after the death of the firſt wife, ſhall have the freehold veſted in him only; and afterwards when he takes a ſecond wife, Whether ſhe ſhall be jointenant with her huſband in poſſeſſion, and the other eſtate merged in the baron, or ſhall take by way of remainder after the death of her huſband, by the words before *s.* to the intent that ſhe ſhall have it for her life for jointure, or not? And DYER thought that ſhe ſhould not take by the one way or the other, becauſe ſhe was not capable nor *in eſſe* at the time when the remainder fell to the huſband; and then ſhe ſhall never have it afterwards, any more than if it was of a remainder of the land fallen in poſſeſſion, of which, it hath been agreed by all, that ſhe ſhall take nothing. But of a remainder in uſe it ſeemed to all the other Juſtices that it alters the law; but DYER thought it all one ſince the ſtatute; and DYER thought that a remainder to the wife for life after the death of the huſband, cannot be deemed or taken for a jointure. And this for two reaſons: one becauſe ſhe ought to take eſtate jointly with her huſband according to the etymology of the word *jointure*. And the other becauſe in the ſtatute of [6] *R.* 2. c. 6. that the wife who conſents to the raviſher loſes dower, *et conjunctum feoffamentum ſuum*, which is intended jointure. Alſo the ſtatutes of 11 *H.* 7. c. 20 & 27 *H.* 8. * c. 10. make no demonſtration in caſes of jointures of wives in poſſeſſion, or in uſe of any eſtate of remainder after the death of the huſband, but of eſtates made during the life of the huſband jointly or ſeverally and ſolely to the wife: but of this opinion *quære*. Alſo there was much treated in the arguments of this caſe, of the nature of uſes, and what is an uſe, benefit, confidence, perception of profits &c. and when they firſt began. And ſo in concluſion of the opinions, MOUN-

[Co. Lit. 188. a. 2 Bl. Com. 181, 182 Fearne Cont Rem 240. 1 Ld. Raym. 312. See 2 Bl. Rep. 1213.]

Dy. 190. a. 5 E. 3. Tayle 8. tem. E. .taile 24.

10 El. 274. b. 30 Aſſ. 47. 1 Aſſ. 11. 27 H 8. 11 Dy 317, 248. Mo. 377. 8 El. 248. a. 4. Mar. 148. a. 4 Co. 2. a.

* [341. a.]

Co. Lit. 326. 4 Co. 2.

1 Co. 121.

(50) Another caſe 17 *El. C. B.* between *Mutton* and *Mutton* [*ante* 274. b pl. 42.] where the point was, if one limit an uſe to himſelf, and his wife which ſhall be, afterwards he marries, whether the wife ſhall take? and it was holden by three juſtices that ſhe ſhall; but DYER *contra*: But it did not come in queſtion there, whether ſhe ſhall take it jointly, for ſhe ſurvived, and the queſtion was between the wife and the heir.

Mich. 37. *El. B. R. Woodliffe* v. *Bra*, [Cro. El. 439.] adjudged that the wife ſhall take after the marriage, if no act be done by the huſband to deſtroy the uſe.

SON

SON and HARPER were for and with the ſecond wife, and for the jointur; and MANWOOD and DYER *contra*. And therefore the matter was adjourned into the exchequer-chamber. And there in *Mich.* Term next it was argued by JEFFERIES and BARHAM: And afterwards the parties agreed between themſelves; and judgment given by default. Dy. 242.

Eaſter Term,

17 Queen Elizabeth.

Vernon *againſt* Stanley, and others.

Mich. 13 & 14 El. rot. 2085. C. B.

(51) A *Feme covert* tenant by receit in *formedon* in remainder for part, vouched to warranty *N. Lonford*, Eſq. and for the reſidue demurred in law upon the inſufficiency of the writ and count. And the demandant took three counterpleas to the voucher, *ſ.* for one part of the tenements that the wife had nothing in it but jointly with her huſband &c. And for another part, that the ſaid vouchee or any of his anceſtors never had any thing therein in demeſne, reverſion, or in uſe, ſince the creation of the title of the demandant, but jointly with *T. Fitzherbert*, Knight, and others, who are in full life &c. And for the reſidue that the huſband, and the wife tenant by receit, pending the writ, had levied a fine, *ſur cognizance de droit come ceo* &c. with warranty to a ſtranger, judgment, if &c. upon which counterpleas the wife tenant by receit, demurred in law &c: and to the plea in abatement of the writ and count, the demandant rejoined, by demurring in law &c. But the opinion of the Court was, that none of the three counterpleas was good: for the firſt, it is clear that the wife ought not to loſe her voucher or warranty of the land by the laches or default of her huſband; for it is intendable that this jointenancy was

If a *feme covert*, tenant by receit in formedon vouch, it is no counter plea that ſhe has nothing but jointly with her huſband.

A counterplea of jointenancy in him, or his anceſtors, with I. S. ſhould expreſsly allege between which anceſtor by name and I. S. or that it is the vouchee himſelf; and that the jointenancy continues.

And it is no good counter plea to the voucher, that pending the writ the tenant by receit levied a fine to a ſtranger; for the demandant is eſtopped by his writ to ſay he is not tenant.

Dy. 315. b. pl. 1. N. E. 328. b. Co. Lit. 284. 2 Rol. Ab 445. 8 H. 7. 6. 20 Aſſ. 2. 11 E. 4. 8.

was made during the coverture, and then no moieties between them; and now ſhe is by the receit as a *feme ſole* &c. And for the ſecond, which is more doubtful and ambiguous, it is not good in form; for the jointenancy ought to be expreſsly alleged between the vouchee himſelf, or ſome of his anceſtors by name, with the * ſurvivors whoſe eſtate the tenant who voucheth hath. And alſo no averment of the continuance of the jointenancy during the life of the vouchee, or his anceſtors &c. is made, which is very material in the counterplea; for iſſue was joined upon this averment in 10, 11, & 14 *H.* 6. [15. pl. 50.- 19. pl. 15 & 25 pl. 4.—9. pl. 40.] in *formedon* by *Chartſey* v. *Skrein*, as appears *M.* 11. *H.* 6. *ro.* 584. And for the third, the demandant ſhall be eſtopped by uſing and proſecuting his action againſt them as tenants, from alleging this alienation of the land by fine pending the writ, as well as he was before upon the counterplea of the receit, fol. [315. b.] Alſo if there ſhall be a counterplea, it is to the lien and warranty, and not to the voucher; for it proves that the vouchee ought not to render in value when the vouchee hath nothing in the land of the demandant at the time of the voucher &c. wherefore, by the opinion of the Court, the demandant relinquiſhed his counterplea, and the tenant likewiſe his voucher, by conſent, by motion of the Court, and pleaded to the iſſue in chief &c.

[Booth real act. 51.]

9 E. 4. 37. b. 6 H. 4. 4. b. Plow. 58. b. 2 H. 7. 7. 13 H. 7. 25. Dy. 9. a. 290. a.

* [341. b.]

8 H. 7. 5. b. Dy. 290. b. 1 Inſt. 284. b.

12 Aſſ. 41. 38 E. 3. 10. 21. E. 3. 53. Error 74. 14 H. 6. 26. a. 19 E. 3. Reſceit 113. 21 H. 6. 13. 1 H. 6. 2 a. Count. plead reſceit 4.

To avoid a leaſe, made by a convent within one year before 27 H. 8. c. 28. reſerving leſs than the accuſtomed rent, it muſt be expreſsly averred to be fraudulent, or it ſhall be intended good and *bona fide*.

(52) A LEASE for 60 years was made by a prior and convent of one of the firſt ſuppreſſed monaſteries, which was under the value of £.200 *per ann.* within 47 days before the act of 27 *H.* 8. [c. 28.] made upon which the old accuſtomed rent was not reſerved. Whether this leaſe may be avoided by virtue of either of the two proviſoes next following, after the general ſaving in the act, (one proviſo ſpeaking of fraudulent and crafty leaſes, made within a year before the act, by divers priors &c. by which the houſes were much decayed and diminiſhed: the other, making mention affirmatively, that thoſe leaſes are good upon which the ancient accuſtomed rent is reſerved; and no negative word, as by colluſion apparent) unleſs an expreſs averment of fraud be alleged

Hob. 173, 310. Raſ. Monaſtr. 9. Mo. 882. 10 Co. 56.

[5 Com. dig. 54. 3 Term Rep 636. 1 Term Rep. 145.]

to

to avoid the leaſe, or not? And by the opinion of all the Juſtices, the leaſe ought to be intended good, and *bonâ fide* made by them who would not do any injury to any in the world, nor any fraud and covin in that deed, unleſs it be expreſsly averred, and, that by that reſervation of leſs rent than is uſual, the monaſtery was greatly decayed and diminiſhed. For it ſtands indifferently, that the thing leaſed was in decay, wherefore the diminution of this rent was juſt and reaſonable &c. Alſo, the firſt proviſo does not condemn all chief governors of ſuch monaſteries of fraud and craft in making of leaſes within the year, but ſome governors, for the words [§ 4.] are, "that for as much as divers governors have lately made "fraudulent and crafty feoffments, leaſes &c. to the great "decay and diminution of the houſes, that all ſuch feoff-"ments and leaſes made within the year &c. ſhall be "utterly void, and of none effect." And it may be that the head governor of that monaſtery in queſtion was frank, and not to be charged with fraud &c. without expreſs averment of it, therefore &c.

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* Digby *againſt* Mountford.

* [342. a.]

(53) FORMEDON was brought upon a patent of king *H.* 7. made in tail to *Simon Digby*. And the firſt letters of the name and title of the king were omitted in the patent, *ſ.* a great ſpace for the letters *H. R. A. F.* &c. for *Henricus Rex, Angliæ, Franciæ*, &c. And great ſcruple made, whether this patent as it is, be allowable in law, or whether theſe letters may be inſerted in the Chancery now, and there amended or not, without licenſe or conſent of the Queen; in which caſe offer was made by the Lord Keeper of the Great Seal, that if the Juſtices of *C. B.* would certify that he might cauſe it to be amended, and ſupplied now in the Chancery, he would do it. But at length the patent was allowed in the Bench as it is; for numbers of like letters patent are ſo omitted (*propter honorem regis*) in order to have the letters flouriſhingly limmed with gold &c.

In a patent of king *H.* 7. the four letters *H. R. A F.* being the king's ſtile were left out, to be afterwards limmed with gold; yet this patent in *C. B.* was holden good.

2 Co. 17. a. 9. 48. a. Co. Lit. 125. Plow. 244. b. Styl. 302. [Godb. 415.]

And the formedon was brought of certain acres of land, meadow, paſture, and wood in *Colſhil*, but the gift

The king by letters patent grants *the manor of C. with the appurts.* In

formedon for 100 acres of land &c. in C. not mentioning the manor, the plea ſhould be *non conceſſit*, and not *nient compriſe*.
6 H. 8. Cro. 170. 1 Co. 41. 4. 71. 6. 15. 1 Keb. 626.
[Doct. Plac. 307, 308. Hard. 158.]

and grant was of the manor of *Colſhil* with the appurtenances only; but the Court did not make any mention of the manor whereof the acres demanded by the pretence of the demandant are parcel; and the tenant pleaded "*not compriſed in the patent*" &c. But by the opinion of the Court, the beſt iſſue is, that *H.* 7. did not give or grant the tenements aforeſaid by the letters patent aforeſaid &c. See ſuch a traverſe in the Exchequer *T.* 18. [*Eliz.* fol. 353. a. *poſt.*]

Trinity Term,

17 Queen Elizabeth.

Alice Towers *againſt* Burrows.

A man having iſſue two daughters by divers venters, deviſes a moiety of his land, "*to his wife "for ſeven years, and "that his eldeſt daugh-"ter ſhould enter into "the other moiety on the "day of her marriage, "and if his wife be en-"ceinte with a daugh-"ter, ſhe ſhould take an "equal ſhare with her "other ſiſters.*" This is no deviſe of that moiety to the eldeſt daughter, but only a liberty to enter and occupy the land during minority of the youngeſt, who ſhall take an equal ſhare in the whole.
1. And. 47.
3. Leon. 25.
[Bendl. 264.] } S. C.
Jenk. c. 6.
c. 25.]
[8. Vin. Ab. 347.]
Dy. 304. 2. Keb. 299. R. 89, 90.
8. Aſſ. 6. 292.

(54) A MAN ſeiſed in fee of a meſſuage and land, had iſſue two daughters by divers venters; and by his laſt will in writing, deviſed "one moiety thereof for "[ſeven] years to his wife," and further willed and de-"viſed that the eldeſt daughter ſhould enter into the "other moiety on the day of her marriage; and if his "wife was then enceinte with a male child, that then he "ſhould have all the premiſes, and ſhould pay to each "of the daughters 20*l.* and if ſhe was enceinte with a "female child, then that infant ſhould have portion and "equal part with the aforeſaid daughters;" and died. The wife entered into the moiety accordingly, and kept the ſaid daughters in the houſe aforeſaid; and within the ſeven years the eldeſt daughter took huſband, and they entered into the other moiety according to the will; and alſo within the ſeven years the youngeſt daughter died without iſſue. And after the term of ſeven years expired, the uncle of the youngeſt daughter, as heir of the whole blood of the part of the father, * claimed the moiety. And in truth the wife was not enceinte with any child. Whether the eldeſt daughter ſhall have three parts *ſ.* a moiety and half of the other moiety, or only

* [342. b.]
13. H. 7. 17. b.
9. Eliz. 261. b.

the

the moiety? And by the opinion of the Judges, ſhe ſhall have only the moiety; for by the circumſtances of the will aforeſaid it cannot be intended that the father deſigned otherwiſe, but that every daughter ſhould have an equal portion and advancement. And this liberty, which gives more to the eldeſt as to the entry into the other moiety when ſhe ſhould be married, is not to be intended a deviſe or gift of any eſtate to her, but to uſe and occupy it; which thing the youngeſt daughter for tenderneſs of age cannot do &c. Alſo, according to this opinion was judgment given in *B. R. Trin.* 15. of the preſent Queen, *rot.* 23. And ſo it was adjudged in the Bench in the caſe above in this term. Dy. 291.

Earl of Arundel's Caſe.

(55) *HENRY*, Earl of *Arundel* being ſeiſed in fee of the manor of *Haſelber-Brian*, in the county of *Dorſet*, granted by his ſteward in a court there holden, a copyhold to one *Meryfield*, for term of his life, to hold at the will of the lord according to the cuſtom of the manor; which manor alſo hath a cuſtom that the widow of ſuch copyholder ſhould enjoy her widow's eſtate in the copyhold. After that, the Earl in the time of Queen *Mary* by indenture tripartite gave the ſaid manor to *Thomas*, late Earl of *Northumberland*, and to the heirs male of his body, remainder thereof for default of ſuch iſſue to *Henry Percy*, Knight, now Earl of *Northumberland* his brother, of like eſtate, ſaving the reverſion to himſelf and to his heirs; upon this condition *ſ.* that if the ſaid Earl *N.* and *H. P.* ſhould die without heirs male of their bodies iſſuing, or if the aforeſaid Earl *N.* or the heirs male of his body iſſuing, or the aforeſaid *H. Percy*, or the heirs male of his body iſſuing, or any of them, the reverſion of the premiſes or any parcel thereof ſhall diſcontinue, or permit or cauſe to be diſcontinued, or ſhall ſell, bargain, convey, give, or grant, or by any means aliene the manor aforeſaid, or any parcel thereof to any perſon or perſons hereafter, or ſhall permit any recovery againſt them or any of them, or ſhall diſcontinue any part of the premiſes; or ſhall do, or permit, or cauſe to be done or permitted,

A. grants a manor to B. in tail, on condition that he or any of his iſſues ſhall not aliene or do any act, *quo minus* it may revert immediately on failure of iſſue. B. marries, that is no breach, or it would be repugnant to the eſtate granted. He grants a copyhold to C. and tho' perhaps an expreſs condition not to grant a copyhold would reſtrain, yet a general condition like this ſhall not be taken to comprehend private cuſtoms; ſo this is no breach. And even if A. might enter for any forfeiture, C might retain his eſtate, as ſuch grant by the lord *pro tempore* is incidental to the cuſtom. Attainder of treaſon is an indirect breach of a condition not to aliene; but not of this condition, for the crown only takes during the lives of the iſſues; and on failure of iſſue it ſhall revert immediately.
Jenk. c. 6. c. 29. S. C. 4 C. 43 6 Co 41. 3 Co 24 a. 10 Co. 37. a. 1 Inſt. 229. b. 1 Co. 37. 49. a.

mitted, any thing, or any deed or deeds directly or indirectly, by art, or contrivance, *quo minus*, the aforesaid manor with the appurtenances shall and may revert to the aforesaid Earl *A.* and his heirs, without impediment or delay, in possession, and that immediately, if the aforesaid Earl *N.* or *H. Percy*, *obire contigerint* without heirs male of * their bodies issuing, that then it should be well lawful for the aforesaid Earl *A.* and his heirs to re-enter into the aforesaid manor with the appurtenances, any thing in the said written indenture tripartite notwithstanding. After the time of Queen *Mary*, the said Earl of *N.* took a wife, and after that granted the reversion of the said copyhold after the death, surrender, or forfeiture of *Meryfield* to one *Langar*, for the term of his life at the will of the lord according to the custom of the manor, which thing by the custom he might lawfully do. After this *Meryfield*, in the eighth year of the now Queen, died, and his wife entered, and enjoyed widow's estate in the copyhold. And afterwards *s.* in *September* in the 11th year of the now Queen, the Earl of *N.* committed high treason, of which he was afterwards *s.* on the ninth day of *October*, in the twelfth year of the now Queen, outlawed and attainted; and so being attainted died without any issue male. And within thirty-seven days after the outlawry, the Earl of *A.* by virtue of the said condition, re-entered into the manor, after which entry the widow of *Meryfield* died seised of the said copyhold; after whose death the Earl of *A.* entered therein, upon which possession *Langar* the grantee of the Earl of *N.* of the reversion entered; upon which the Earl of *A.* brought an action of trespass.

* [343. a.]

1 Leon. 16. 1 Co. 140. b. 8 Co. 24. a.

3 Cro. 662.

5569. Decol. apud Eborum An. 14.

(36) And upon the general issue of not guilty, the jury found all this special matter by a verdict at large; but they did not find specially in what particular the condition (for which the Earl of *A.* re-entered) was broken: And yet they found the act of 26 *H.* 8. c. 13. touching the forfeiture of lands entailed, being an estate of inheritance for treason with the saving of all titles of strangers &c. in which is no mention of entries. Also they found the act of 33 *H.* 8. c. 29. [c. 20.] for confirmation of attainders at common law for treasons, and for deeming and vesting of actual possession in the king without

Raft. Treason 15.

15 El. 325. b. Dy. 332. pl. 27. Raft. Treason 16.

without inquiſition or office with the ſaving therein, in which are expreſsly ſaved all rights, reverſions, conditions, and entries of ſtrangers, as if the act had never been made. Now Whether the entry of the Earl of *A.* be lawful, becauſe the Earl of *N.* took a wife, and alſo granted the reverſion of the copyhold as is aforeſaid, and laſtly committed treaſon, and was thereof attainted by outlawry, by which the manors entailed are forfeited to the Queen as long as the entail ſhall endure, in ſuch ſort, that the Earl of *A.* was put to his petition, *monſtrans de droit*, or *ouſter le main* before he could enter, or for any one of the three cauſes, were the queſtions moved by the counſel. Alſo admit his entry lawful, ſtill Whether he can * avoid and defeat *Langar*'s eſtate in reverſion which was fallen in before the treaſon committed, but not executed in the life of the Earl of *N.* the grantor; nor could be by reaſon of the widow of *Meryfield*'s eſtate, which widow died long after the entry of the Earl of *A.* into the manor. (57) *Quære* alſo of the words after the laſt ſentence, *ſ. quo minus* &c. it ſhould and might revert, if the aforeſaid Earl and *H. P.* without heirs male &c. *obire contigerent*, which is the future tenſe of the potential and ſubjunctive mood, Whether it be neceſſary for both in fact to die &c. which hath not yet happened. But the opinion of all in effect was, that it ſhall be taken in the potential mood *ſ.* as if it were *contingerent* &c.

1. Mar. 101. a. R. 694.

Kitchen 85.

* [343. b.]

4. Co. 24.

And afterwards in *Mich.* Term next in the Exchequer-chamber, FETTIPLACE, BARHAM, BELL, and POPHAM argued on three ſeveral days *pro* and *contra*. And afterwards at *Serjeant's-Inn, Fleet ſtreet*, in an aſſembling and conference of all the Juſtices of both Benches, the major part concluded for the action againſt the plaintiff; but JEFFREYES, MANWOOD, and SOUTHCOTE, *e contra*, and for the plaintiff. And JEFFREYES thought the condition broken in all the three points, and ſo did SOUTHCOTE and MANWOOD in the two laſt; and ſo GAWDY thought; but for the action he was againſt the plaintiff; MOUNSON thought againſt the plaintiff in all, not ſhewing any reaſon, and HARPER agreed with him in all.

R. 694.

(58) DYER thought as to the firſt point, that it is no breach of the condition; for if it had been an expreſs condition

43. E. 3. 6. a. 6 Co. 41. Co. Lit. 224. Dy. 141, 143.

22. E. 3. 3. 19. Br. Condition 82.

condition that he ſhould not marry, or that his wife ſhould not be dowable, that would have been repugnant to the eſtate. And alſo the title of dower is no impediment to the reverter; for, iſſue failing, the reverſion comes entirely to the donor by the act of the law in poſſeſſion, becauſe ſhe could not enter into her dower without aſſignment, wherefore &c. Alſo for the ſecond point, the grant of copyhold in reverſion does not touch the reverter of fee ſimple, nor is any incumbrance, but as the entire manor departs from the donor ſ. the poſſeſſion of the freehold, in the ſame manner it returns back; for tenant by copy is only tenant at will according to the cuſtom of the manor by the common law, nor was it ever ruled otherwiſe. And alſo in the making of a general condition, as this is, which is in law conſtrued penal, and rigorous, and ſtrictly, not liberally, any ſuch private cuſtom to which the law hath little regard is not intenible, nor to be compriſed in common ſenſe, any more than a warranty upon land in borough *Engliſh* or *Gavelkind*, which binds only the heir at common law, and therefore of a condition the heir at common law alone ſhall take advantage; yet he agreed that if it had been ſpecified that the donee ſhould not grant any reverſion of cuſtomary land, that would have been good; but it is otherwiſe in this ſo general a condition; which * MANWOOD and WRAY at firſt granted.

Mo. 147. 1. Leon. 16. 1. Co. 140.

[Robinſon on Gavelkind, 119, 125.] Br. Gr. 11. 37. H. 6. 1. 4. E. 3 14. a. 22. E. 4. 10. a 21. Aſſ. 8. 4. E. 3. 25. a. 3. H. 4. Garranty 94. Lit pl. 735. Dy. 317. a. Mo. 114.

* [344. a.]

(59) Alſo for the laſt point, he thought that the bare commiſſion of treaſon without a ſubſequent attainder was not a cauſe of breach, as MANWOOD held it was; but by the attainder enſuing the Queen was entitled to the forfeiture of the entail. And it ſeemed to DYER, that it was an alienation of the eſtate tail indirectly, and after a manner according to the words of the condition, which is merely contrary to the intent of the donor who had regard to the iſſue in tail, as well as to himſelf, wherefore the queen ſhall have a fee ſimple determinable upon

[4 Bl. Com. 381, 387.]

(59) RHODE, *Juſtice*, in the argument of *Knight's* caſe, 5. Co. [fol. 54. Gouldſb. 20.] *cites it* to be adjudged in 4. E. 6. that if one make a feoffment in fee, upon condition that neither he nor his heirs commit treaſon, and afterwards one of them commit treaſon, in that caſe the Queen ſhall have the land by way of eſcheat; for in equal concurrence the title of the Queen ſhall be preferred: upon which ground is the opinion of WESTON in *Hale's* caſe in Comment. [Plow. 257.] 4. E. 3. 12. by THORPE.

the

the continuance of the iſſue in tail by the ſtatutes of 26. & 33. *H.* 8. [c. 13. & 20.] and yet this reverſion entirely ſaved. And when the donee dies, and his iſſue fails, the manor immediately *ought and may* (which are verbs of right and poſſeſſion,) revert to the donor immediately without impediment or delay, and that in poſſeſſion by the act of the law; and this without any ſuit, by reaſon that the eſtate of the Queen is determined, as in the caſe of Lord *Barkley* [ante 102. a. b.] when iſſue male of the body of *H.* 7. failed, and his entry ruled to be lawful without ſuit &c. And it ſeems that all the ſcope and conſequence of every point of reſtraint above is referred to theſe words, and the clauſe *quo minus* &c. by which the vigor and rigor of the ſeveral reſtraints are qualified † *and* tempered, and then no breach of the condition. But if this clauſe had not been in the condition, then it would be otherwiſe; wherefore he thought the entry not lawful, nor the action maintainable. But WRAY thought, that by this laſt point only, the entry into the manor was lawful by the act of 33, which ſaves preſent titles of entry, as that was &c. but not to ouſt the reverſioner of the copy for the condition broken, wherefore &c.

Winch. 106.
1 Inſt. 354. b.

Plow. 252. a. 227, 230, 381. 3 Co. 34. B. N. C. 354. Dy. 240.

4 Co. 23. b.

† Orig. *eſt.*

Michaelmas

[344. a.]

Michaelmas Term,

Adjourned till Mens. Michael. in the

17 & 18 Years of Queen Elizabeth.

Henningham's Caſe.

Where judgment is againſt the heir on the bond of his anceſtor by *nihil dicit*, *non ſum informatus*, or confeſſion, the judgment ſhall be general and affects preſumed. Therefore it ſeems in ſuch caſe on *ſcire facias* to have execution, he is too late to plead *riens per diſcent*.

a. Rol. Ab. 70. 1. Noy. 56. 11. H. 7. 12. Dy. 199, 239.

[(*a*) Salk. 315. Cowp. 727, 728.]

Mo. 522. 34. H. 6. 22. 40. E. 3 15. Plow. 440. 1. a. R. 67. 3. Cro. 350. Dy. 139. a. 10. H. 7. 8. b. 39. Aſſ. 18 10 H. 7. 5. 13. H. 7. 3. 48 E. 3. 22. b.

* [344. b.]

(1) A *ſcire facias* to have execution of a judgment in debt upon *nihil dicit*, was brought againſt the daughters and heirs of *Henningham*, upon a bond in which the father bound himſelf and his heirs; the defendants plead in ſtay of execution *riens per deſcent* in fee ſimple on the day of the firſt writ purchaſed, or ever ſince; and whether this *(a)* ſhall be pleaded, was in queſtion; for the firſt judgment was general, without ſaying *of the lands and tenements of the father, deſcended in* * *fee ſimple*, as it ought, by the opinion of DYER, and all the Prothonotaries; and the precedents are accordant for the moſt part. And ſo it ſhall be upon a *non ſum informatus* pleaded, or upon confeſſion of the action, if the heir himſelf will not ſhew to the Court that he has nothing by deſcent, or that he hath only one acre &c. for the original writ of debt againſt the heir is *debet* and *detinet*, not ſo againſt executors. And the Court ought rather to intend that the heir hath by deſcent, than otherwiſe, becauſe it is not denied by the heir. And it ſeemed to DYER, that if the profits of the land deſcended from the death of the father until the day of the writ, amount ſufficiently to ſatisfy the debt, and the plaintiff will ſhew that to the Court, and the defendant cannot deny it, the plaintiff ſhall have a general judgment and execution immediately; for note that the entry of the replication where the defendant pleads *riens per deſcent* is, that the defendant hath ſufficient lands and tenements by hereditary deſcent &c. whereof he might fully have ſatisfied the debt aforeſaid. But MANWOOD *e contra totis viribus*, and

[Cro. Eliz. 692. 2. Ld. Raym. 786. 5. Com. dig. 213. 3. Bac. Ab 30, 31, and now ſee 3. & 4. W. & M. c. 14 § 6. Carth. 354. Bul. Ni. Pr. 175, 176.]

and that the firſt judgment above ſhall be ſpecial. See a like matter *H.* 6. & 7. *E.* 9. fol. [81. a. *ante* pl. 62.] and *Trin.* 3. & 4. *P.* & *M.* fol. [149. a. *ante* pl. 80.] and *Mich.* 5. Queen *Eliz.* fol. [225. a. *ante* pl. 34.] *Killegrew* againſt *Trewinnard*, and ſee *Lib. Intrac.* fol. 171. [41. b.] Debt againſt the executor of the heir upon a bond of the anceſtor without any averment in the count, that aſſets deſcended to the heir, which is intenible in law until the contrary be pleaded by the defendant.

Plow. 441. a. 368. 9. Co. 99. b. [Raſt. Ent. 172. b.]

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(2) A MAN grants a rent-charge out of his land by deed, in which there want ſuch words as, *for himſelf and his heirs.* The grantor dies, the grantee brings a writ of annuity againſt the heir of the grantor, and counts upon this deed; the heir appears to the action, and imparls until another Term, and afterwards the grantee diſcontinues this ſuit, and diſtrains for the rent-arrear, and makes avowry, and the matter above is pleaded in bar; and thereupon the parties demur. And in next *Michaelmas* Term it was ruled by the whole Court, that the diſtreſs was good and legal, becauſe the perſon of the heir was never charged, or bound by any word in the deed of grant; and then it follows conſequently that no election remains in the grantee after the death of the grantor to make that an annuity or rent-charge; wherefore although proceſs in the annuity had gone even to judgment, as *Littleton* put the caſe [§ 219.] yet that would not diſcharge the land in this caſe.

One grants a rent-charge without ſaying *for himſelf and his heirs*; by his death the grantee's election is determined, and he cannot charge the heir in annuity.

If a man bring annuity or an action which does not lie, where he may diſtrain, it ſhall not diſcharge the land.

Hob 58. 2. H. 4. 13. a. 5. H. 7. 33 Coke 10, 128. a 182 Jenk. cent. 4 c. 13. 2. Rol Ab. 226. 49. E. 3. 5 37. H. 6. 19. b. 21. H. 4. 4. a. [10 Lit. 144. b. note (2) 145. a. 1. Bac. Ab. 120, 121.]

10 E. 4. 10. Lit. 48. a. Finch, fo. 17. b.

(2) *Hil.* 42. *C. B.* One who had nothing granted a rent-charge, for which the grantee avowed in replevin; yet it was agreed that he might bring annuity; for there never was any election.

Owen ap David's Caſe.

(3) IT was found before the eſcheator of *Carnaervon*, by virtue of a *mandamus*, in the ſecond year of the now Queen, that *Owen ap David* * was ſeiſed of certain lands in fee, holden of the Queen as of her principality of *Wales*, *in capite*, by the ſervice (*a*) of going in the war of

Tenure of the Queen *by the ſervice of going to the wars at her charge*, is no tenure in *capite*, though found ſo by office.

(*a*) See note (a) to 285. b. pl. 39. ante.

the

Dy. 44. b. 2 Rol. Ab. 503, 504. [Davies 160, 161.] 30. H. 8. 44. b. Davies [59.] 67. a Dy. 58. 359. b. 12. Co. 136. Br. Livery 57. Tenancy 61

the Prince at the charges of the Prince. Whether that be a tenure *in capite* or not, was the queſtion. And in the next *Eaſter* Term, it was holden by the council of the Court, no enure *in capite* &c.

[12. Car. 2. c. 24. § 1 & 4. abolished this tenure.

In Cur.' Wardorum.

Thornton's Caſe.

A baſtard to whom the mother conveys knight-ſervice land, is not a child within 32. H 8. c. 1. 10. Co. 83. 6 Co. 77. 29. E 3 14 b. Dy 313. b. 296. b. Raſt. Willes 2. Dy. 29, 287. 374. 2. E. 6. Br. 394.

[Co. Lit. 78. a. 123 Mr. Hargrave's note 8. That he is within the marriage-act. 1. Term Rep. 96. And ſee 2. Brown Ch. Caſ. 585.]

(4) WHETHER the baſtard-daughter of a woman ſhall be taken in law as one of her children, ſo that if the mother diſpoſe of all her lands holden in chivalry to the ſaid baſtard-daughter by conveyance in her life-time, the Queen ſhall have a third part by the ſtatute 32. *H.* 8. [c. 1.] or not. And in next *Eaſter* it was holden by SAUNDERS, KINGESMIL, and KAYLEWAY, that the Queen ſhall not have any third part in this caſe, becauſe ſhe is not a lawful daughter, or child of the mother more than of the father. But DYER doubted of the caſe; but upon the opinion aforeſaid, a decree was made in *Mich.* 19. of the now Queen for *Thornton* againſt the Lady the *Queen*.

(4) *Trin.* 10 *Eliz. Cur' Ward' lib. decret.* fol. 327. † Madam *Woodhouſe*, being ſeiſed of the manor of *A.* holden of the King in *capite*, made a feoffment thereof in conſideration of a marriage to be had between *Urſula*, a baſtard-daughter of the ſaid Madam and *Will. Cotton*. Madam *Woodhouſe* died, having iſſue *Dudley Arrundall*, who was found her heir. The auditor charged the third part of the ſaid manor of *A.* by way of livery, upon the ſtatute of *Wills*; but on great deliberation of the Juſtices, it was reſolved that the baſtard-daughter ſhall take that land as a mere ſtranger, and not as any child of the ſaid Lady; and therefore the land was diſcharged.

The like alſo in † *Thompſon's* caſe in the Court of *Wards*, fo. 599.

The legal quarter of a year conſiſts of 91 days, the half of 182; but the whole of 365: the law paying no regard to the odd hours. 6. Co. 62. Dy. 218. b. Cro. Jac. 166. 2 Rol. Ab. 521. Bracton 344. b. Co. Lit. 135. b. 255. Crompton 88. a. [Yelv. 100.5 1. Com. dig. 356, 357. Dougl. 463.]

(5) A Queſtion was moved in the Bench upon a condition of re-entry for non-payment of rent due at *Michaelmas*, *or by the ſpace of a quarter of a year after*, What ſhall be accounted *a quarter of a year?* And by the opinion of the Court, the 4th part of the days of the year, which are 91 days, make a quarter, and to the ſix hours over, the law pays no regard. And *Bendlowes* ſhewed an abſtract from an old book of the Exchequer to this end 5. Note, that every quarter of a year contains in it ninety and one days, which make thirteen weeks; and half a

(5) See *ante* fol. 327. [b. in the marg. pl. 7] for computation of time the caſe of the Biſhop of *Lincoln*.

year

year contains 182 days, but the year 365 days and 52 weeks; the quarter of the year after the feaſt of *Michaelmas*, begins on the 30th day of *September*, and ends on the 29th day of *December*; the next quarter begins on the 30th of *December*, and ends on the laſt day of *March*; the third begins on the firſt day of *April*, and ends on the laſt day of *June*; and the fourth begins on the firſt day of *July*, and ends on the 29th of *September*; from which the verſes,

Ter centum, ter viginti cum quinque diebus
Sex horas neque plus, integer annus habet.

Hilary Term,

* [345. b.]

18 Queen Elizabeth.

¶ The Order and Courſe of redreſſing Erroneous Judgments in *Cheſter* by ancient Cuſtom there.

(6) *IMPRIMIS* the writ of error ought to be ſued out of Chancery, at *Weſtminſter*, as other writs of error, and directed to the Juſtice of *Cheſter*, or his Lieutenant, and returnable before the King whereſoever he ſhall be in *England*; and ſuch ſpace between the teſte and return that three county courts may be holden, which is four months or more: and at the next county court after the *teſte* of the writ, the Plaintiff ought to bring it there into court, where it ſhall be opened, and read before the Judges, who are called in *Latin*, *Judicatores*, and this *ratione tenurarum ſuarum* there. And there the plaintiff ſhall aſſign the error, without praying proceſs againſt the defendant, but only pray the Judges to examine the errors; and if error be found, they may adviſe upon it, or immediately reform it, and award reſtitution; or, by their diſcretion, they may award proceſs returnable at the next county court againſt the defendant, *ad audiendum errores ſi quod*, &c. and ſo re-

In error in *Cheſter* the writ ſhall be ſued out at *Weſtminſter*, directed to the chief Juſtice, and the judges there may reform errors in the record, or proceſs in the abſence of the defendant, and award reſtitution, or a *ſcire facias* againſt him, if they pleaſe; but cannot examine errors in fact; and if they affirm their firſt judgment, all ſhall be removed into B.R and if found erroneous, they ſhall forfeit 100l

There muſt be time given for three county courts between the *teſte* and return of the writ. 4. Inſt. 213, 214. Dy. 320. N.E 230 231. 6. H. 4. 8. 19. H. 6. 12. 6.H. 8. 4. Regiſter 17. 34. H. 6. 47. b. Jenk. cen. 72. ca. 36. Goulſb. 146.

(6) *Trin.* 7 Jac. *Cardiff's* and *Pool's* caſe accordingly. See the record *Trin.* 4. Jac. *B. R.* rot. 608. New Book of *Entries* 228.

form

34. H. 6. 42. Dy. 321. 6. H. 4. 10.

form their own judgment given by themſelves, or by their predeceſſors: and then the record ſhall remain there without removal, and by ſuch means ſave the forfeiture of £. 100 to the King for their erroneous judgment. But if they affirm their judgment which is erroneous, their affirmance and the record muſt be removed into *B. R.* if the party defendant be aggrieved by it; and if their affirmance be adjudged erroneous, although the firſt judgment was given by their predeceſſors, ſtill they ſhall loſe £. 100; and the party aggrieved by their affirmance, or by their annullation, muſt bring a ſpecial writ of error upon the error peremptory, which ſhall not be examined by them: and upon ſuch writ of error firſt brought, the Judges cannot hold plea of error in fact, as the death of one of the parties pending the firſt plea, or ſuch like, which is triable by the country, nor a releaſe of all errors † *or* like matter of bar happening after judgment, but only to examine the errors of the record or proceſs. And to prove the courſe to be ſo, ſee 6. *H.* 4. [8. 9. pl. 36.] and *E.* 34. *H.* 6. fo. 42. by NEDHAM, Juſtice, and by the *Regiſter*, fo. 17. and the *Book of Entries*, fo. 272. and two notable precedents in the time of *R.* 2. of two judgments of two aſſizes reverſed by the Judges for errors in the record, and this in the abſence of the defendant, and without any proceſs *ad audiendum errores* awarded, ſince the error appeared manifeſt; and another precedent before ENGLEFIELD, in the 7th year of *H.* 8. with the judgment in aſſize by † *Colin* v. *Leigh*, was by the Judges affirmed in part, and annulled in part; but there the defendant was preſent by proceſs of *ſci. fa.* which the Court thought reaſonable and neceſſary to do before proceeding to the examination of the errors, * if he ſhould have any thing to ſay, wherefore, &c. and note the *Book of Entries* in the caſe above. The mandate to the ſheriff to garniſh the party defendant was made by the Juſtice of *Cheſter*, and not by the Chamberlain. *Quære.*

[Raſt. Ent. 290. a. Co. Ent. 228. b. 231. a.]

Error 37.

* [346. a.]

[See the caſe of Eccleſton above, 320. b. p. 19. per tot'.]

† Orig. *en.*

Bacon *againſt* the Biſhop of Carliſle and another.

(7) *Quare impedit* by *Bacon* againſt the Biſhop of *Carliſle* and *Witton*, Clerk. The plaintiff counted of a preſentation made to one *Thwaytes* by an Abbot in the time of *H.* 8. and made his title by grant of the next avoidance made by the Abbot and his Convent, and that the church is now void *by deprivation of the ſaid T.* generally; and the Biſhop, as ordinary, entitled himſelf by lapſe by reaſon of the ſaid deprivation of *T.*, becauſe he, not being miniſter according to the order made in the time of *Edw.* 6. and in the time of the preſent Queen, did not ſubſcribe to the articles of religion, according to the ſtatute of the 13th of the now Queen, c. 12. wherefore the church was void &c. and *Witton* his Clerk pleaded the ſame plea: and iſſue was joined upon notice given by the Biſhop to the Patron of that deprivation, *ſ.* whether the Biſhop hath notified to the aforeſaid plaintiff the ſaid deprivation at the church aforeſaid as the Biſhop hath alleged or not. And the Jury gave a ſpecial verdict, *ſ.* that the Biſhop notified the nonſubſcription aforeſaid by *T.* to the articles aforeſaid, at the church aforeſaid, by his certain intimation ſealed, of the tenor following, *ſ.* "*R.* Biſhop of *C.* to all Rectors, Vicars, with cures, without cures, Clerks, and lettered men whatſoever, within our dioceſe of *C.* health. Since *R. T.* Clerk, perpetual Vicar of the perpetual vicarage of the pariſh-church of *C.* in our dioceſe, hath not ſubſcribed the articles &c. according to the ſtatute &c. we commanding them all, and eſpecially the Curate of *C.* to declare in the ſaid church of *C.* the ſaid nonſubſcription &c." And the Jury further found, that the ſaid intimation was publicly read in *Engliſh* by the Curate in the pulpit in the ſaid church of *C.* on the day of the Epiphany of our Lord in the time of divine ſervice in the morning &c. and afterwards was affixed on the door of the church by a general apparitor &c.: and whether this matter be ſufficient notification to the ſaid plaintiff of the ſaid deprivation of *T.* or not, they are ignorant, and pray the advice of the Juſtices.

(8) *Note*, no mention of the Patron, or of his name, in the intimation. Alſo, no expreſs mention is made of the

If the incumbent be deprived for not ſubſcribing the articles, the ordinary muſt give *perſonal* notice to the patron.

A notification publicly read in the church, and fixed to the doors there, is not ſufficient.

In the intimation of ſuch deprivation he ſhould be called *late* incumbent, and ſhewn to be ſuch perſon as is bound to ſubſcribe within *the ſtatute*.

Dy. 294, 327. pl. 7. 22. El. 369. b.

Raſt. Spirit. Leys 4. 3. Cro. 680. Mo. 888. 858.

Ante 328. 7.

6. Co. 29. b.

the deprivation according to the proviſo in the ſtatute aforeſaid, but that *T.* hath not ſubſcribed to the articles, nor any matter of qualification of *T.* that he ought or need to ſubſcribe, but he is called in the inſtrument * *perpetual* Vicar, and not *late* Vicar: therefore, then, he was not deprived at the time of the date of the intimation; wherefore no deprivation was or could be notified. Alſo, *quære* of the matter in law of ſuch public notice at the church, &c. and not to the perſon of the patron. And note the favour of the Jury to the defendant, who found in their verdict that *Thwaytes*, the laſt incumbent, not having orders for celebrating divine ſervice according to the form of the ſtatute of *Edw.* 6. or as is uſed at preſent, hath not declared his aſſent before the ordinary, or ſubſcribed to the articles &c. which is matter *dehors* their iſſue, and charge; therefore, there ought to be no regard to that. And note the opinion of the Civilians, that this intimation is not ſufficient to prejudice the patron, becauſe it is upon a ſtatute penal to the incumbent, and penal to the patron, to make him loſe his preſentation; and therefore ſuch notice to the patron ought to be *truly*, *properly*, *and perſonally*, *and not fictitiouſly*; and the intimation ought to notify, that the Ordinary hath deprived him by ſentence declaratory for nonaſſent and nonſubſcription to the articles, according to the ſtatute; otherwiſe it ſhall be intended, that the Ordinary is content to permit him &c. And on the laſt day of Term it was reſolved in the Exchequer Chamber, by the opinion of all the Juſtices, and of the Chief Baron of the Exchequer, except HARPER and MOUNSON, *abſente* GAWDY, that the ſaid inſtrument is inſufficient for the cauſes aboveſaid; and thereupon in the Bench, on the ſame day, judgment was given for *Bacon*.

16. El. 327. b. 328. [which ſee and 3 Mod. Ent. 122. Wats. Cler. Law 55, 56.]

Dy. 369, 6. Co. 29.

Toptclif, *qui tam*, *againſt* Waller.

An information for uſury was commenced in C. B. *by ſubpœna*, and concluded *contra formam ſtatuti*, without mentioning what ſtatute. And the defendant appeared by attorney

(9) ONE *Waller* appeared by *ſubpœna* iſſuing out of *C. B.* upon an information of uſury by bill, ſued by one *Toptclif*, who ſues as well for the Lady the Queen as for himſelf &c. and made attorney *ex gratiâ curiæ*, and pleaded *not guilty*; and found againſt him &c.

Quære,

Quære, Whether the *ſubpœna* there be the due proceſs of law? Alſo, Whether he ſhall plead by attorney? and, Whether *not guilty* in this action be a proper iſſue or not? And the information was, that the aforeſaid *Waller*, at *Weſtminſter*, by way and means of a corrupt accommodation on the eighth day of *September*, in the year &c. had and received of a certain *E. Story* £. 5 of lawful money of *England*, for his own lucre and advantage, for the forbearing and giving day of payment of £. 50, from the fourth day of *July*, in the year aforeſaid, until the eighth day of *September* then next following, *s.* beyond the rate of £. 10 in the £. 100 for a year, *againſt the form of the ſtatute* in ſuch caſe made and provided; by which he hath forfeited to the ſaid * Lady the Queen, and to the ſaid plaintiff, who as well &c. £. 150, *s.* three times the value of the aforeſaid £. 50, whereof the ſaid plaintiff demands a moiety &c. and prays as well for the Lady the Queen as for himſelf, that due proceſs of law be made againſt the ſaid defendant &c. and that he come here to anſwer &c. Exceptions were taken to the declaration, in arreſt of judgment, becauſe it is not expreſſed that the *plaintiff* [defendant] † *mutuavit*, that is *lent* to the *defendant* [plaintiff] the £. 50 to the ſaid intent &c. Alſo, no place aſſigned where &c. Alſo, no ſtatute certain. But the exceptions not allowed, becauſe the declaration is made according to the tenor and form of the ſtatute of 37. *H.* 8. [c. 9.] which is a general prohibition, that is to ſay, "That no perſon &c." and contrary thereto, the defendant hath taken uſury by way of corrupt loan &c. And of neceſſity it is implied that the defendant lent the £. 50 &c. And *againſt the form of the ſtatute*, altho' upon divers ſtatutes of uſury, is well enough in an information. 5. *H.* 7. [17. b.] information of liveries &c. And at length, on account of the ſtatute of *Jeofails*, which ſpeaks of miſconveying of proceſs, and misjoiner of iſſue, judgment was given againſt *Waller*.

en gratiâ, and pleaded *not guilty*; yet on the verdict found againſt him, judgment was ordered to be entered accordingly.

16. Eliz. Bendl. 25. Ben. in Keilw 214. 1 And. 48. } S.C.

[Mo. 302. pl. 452. Bul. Niſi Pr. 197. 1. Term Rep. 462]

21 H 7. 14. a. 5 E. 4. 1. 1. E. 3. 4.

1 Mar. 95. a.

* [347. a.]

27. H. 8 23 a. 2. Keb. 289.

Finch, fol. 18. Count good by indictment [1. And. 49.] Dy. 304, 306, 312, 360. B. Action ſur le caſe 61. R. 80, 16. El. Bend pl 17. [Co. Ent. 394. b. Ow. 135. but Cro. Jac 14. contra. Yet ſee 2. Hawk. Pl. Cr. 357, 358.] [Com. dig. Amendment (C. 2.) and ſee Bendl. 252.]

† Sic in orig of all editions; but *mutuatus eſt*, which ſhould have been the word uſed, always ſignifies *borrowed*.

Gage

Gage *againſt* Fourthe.

On a condition to make a leaſe before *Michaelmas* for 31 years if *A.* will conſent, if not, for 21 years; the leaſe for 21 years muſt be made before *Michaelmas*, if *A.* withhold his conſent.
1. And 49. } S. C.
Bendl. 276. }
[Vin. Ab. Condition (Y. b.)]
N. Ben. 8. 1. Ro. Abr. 446. R. 289. 2. Saund. 131. 2. Keb. 619.

(10) THE condition of a bond was *s.* if the obligor before ſuch a day make a leaſe to the obligee for the term of 31 years, if *A. B.* would aſſent to it; and if he would not aſſent, then for 21 years, that then the bond ſhould be void. *A. B.* before the day would not aſſent; the obligor is bound to make the leaſe for 21 years, and that before the day; for one or the other leaſe ought to be made before the day: and this by the opinion of all the Juſtices of the Bench. See the like † *Eaſter* 7 of the now Queen.

(10) One covenants to aſſure a manor to another within two years, and to bind himſelf in a bond of 100*l.* to the plaintiff to pay 100*l.* to his ſon, if he ſhall have any of the age of ſeven years, adjudged that the bond ſhall be made within the two years; but if the contract to make the obligation had been in the other ſentence, there he ſhould have time to make it during his life. *Mich.* 3 Jac. in *C. B.* between *Bracherbury* and *Bracherbury*, [cited in Palm. 430. Lat. 105.]

Devon.

Weſton's Caſe.

If a benefice avoid by acceptance of another, no ſubſequent diſpenſation under 28. *H.* 8. c. 16. can reſtore without a new preſentation.
If the King have two titles, as patron of the fee, and by lapſe, when the church is void his grant of the advowſon without expreſs mention of the immediate preſentation does not paſs that.
When the church avoids by reſignation, the King can have no advantage of a lapſe until after notice given to the patron.
If the King's preſentee after inſtitution die before induction, whether the King ſhall preſent *de novo—quære.*

* [347. b.]

Jenk cent. 6. c. 28. S. C. 4 Co. 75, 79, 89, 117. Dav. 78. Co. Lit. 344. Dy. 351. Co. Mag. Char. 653 Dy. 277. Raſt. reſidence 2.

(11) *RICHARD WESTON* had a diſpenſation from *Rome* in the year 1513, *s.* in the 4th year of *H.* 8. to take and have two benefices with cure; and at the time of the making of the ſtatute of 21. *H.* 8. c. 13. he was beneficed with a benefice with cure of the annual value of £. 8, and on the 29th of *April*, in the 25th year of *Henry* 8. he took another like benefice, being Bachelor of Canon Law; and within a year after the act of 28. *H.* 8. c. 16. made in *June*, he obtained of King *Hen.* 8. a confirmation of his diſpenſation, and with other words of grant to him, by his royal prerogative, to have, uſe, and enjoy the effects of his * ſaid diſpenſation: and by color of the premiſes he enjoyed both the benefices until the 9th year of the preſent Queen; at which time the Queen pretending title of lapſe to the firſt benefice, by default of the patron, ordinary, and metropolitan, by the act of 21. *H.* 8. preſented; and the preſentee was inſtituted and inducted therein, and died thereof poſſeſſed. And in the 11th year of the preſent Queen, *Weſton* reſigned the firſt benefice to the ordinary, who, for any thing firſt alleged, gave no notice thereof to the patron, but ſuffered the ſix months

to

to paſs, and the metropolitan alſo; and the church remained void four or five years, and then the Queen preſented one by lapſe, who is admitted and inducted; againſt whom and the Biſhop the patron brought *quare impedit*. Note, that by acceptance of the ſecond benefice in *April*, in the 25th year of *Hen.* 8. the firſt was void as by death or reſignation, by the ſtatute of the 21. *H.* 8. notwithſtanding the diſpenſation, which alſo was made void by the ſame act, and continued void in law and fact until the 29th year of *H.* 8. when the King made the confirmation and grant of the diſpenſation: and Whether *Weſton* be by that enabled and reſtored lawful incumbent again of the firſt benefice, *quære*; upon which depends the preſentation of the Queen, in the 9th year, by title of lapſe, by reaſon of prerogative through default of the patron, ordinary and metropolitan. But admit that by force of the act of 28, and the confirmation and grant, *Weſton* continued lawful incumbent, then when he reſigned in the 11th year, of which reſignation no notice was given to the patron by the ordinary in his time, nor by the metropolitan in his time: yet Whether the Queen by her prerogative may preſent without notice given to the patron, *quære*. And MOUNSON and DYER were of opinion againſt the plaintiff, and with the defendant; but MANWOOD and HARPER for the plaintiff. (12) And for the firſt queſtion which ariſes upon the ſtatutes, MOUNSON, MANWOOD, and HARPER thought that *Weſton* could not be reſtored to his former benefice without a new preſentation &c. but DYER *e contra*: let them weigh the words of the ſtatute of 28. *s.* "*to have, uſe, and enjoy the effects* "*of the bulls*" &c. and 4. *E.* 4. [3. b.] See a like caſe in the ſtar-chamber, for the impoſition of a cuſtom upon wools &c. when there are two ſtatutes, the one in appearance croſſing the other, and no clauſe of *non obſtant*, is contained in the ſecond ſtatute, ſo that one may ſtand with the other, the expoſition ought to be that both ſhould ſtand in force &c. So here. And the other queſtion, *s.* Whether when the King hath two titles to a church, *s.* the one * as patron of the fee, and the other by prerogative, by lapſe, the church being void, altho' the King grant the fee of the advowſon, without expreſs grant of that preſent avoidance to preſent, the grantee ſhall

Dy. 237, 255. 4 Co. 70. Lit. Rep. 303.

Raſt. Diſpenſations. Dy. 227, 338. a. 6. Co. 52. a.

Mo. 443.

6 Co. 13 a. Inſt. 653. Plow. 10 Rol. Contin. 410. R. 92, 133. 1. Co. 6. 15. 6. Co. 20. 1 Ro. Rep. 92. 2. Keb. 381. 1. Ro. Rep. 154.

[Wats. Cler. Law. 6, 19.]

[Jenkins, fol. 244. reports that by all the judges, in this caſe the church was void by reſignation, for the act of 28 had made *A.* incumbent as he was before 21. without a new admiſſion.]

* [348. a.]

2. Rol. Ab. 196, 353. 354. Plow. 333 a. F. Nat. 33. Dy. 300. a. 11. El. 283. a. Stamf. 44.

Quare imp. 31. Dr. St. 116. 6. Co. 52. [Wats. Cler. Law. 89]

5. E. 4. 3. b. Mo. 307. 13 El. 294 b 22. Eliz. 369. b Dy. 360. 9. Co. 132. a. 1. Inſt 344. Mo. 443. Fit. 34, 5. 25. E. 3. 47. a. 12. El. 292 a. 10. H. 4. 4. a. 44. E. 3. 35. [Wats. Cler. Law, 6. 3. Burn. Eccl. Law, 90. 91. Wood's Inſt. 151. Bul. Niſi. Pr. 124. 2. Wilſ. 200. 3. Burr. 1508.]

[Wats. Cler. Law, 116. 1. Leon. 156. poſt. 360. pl. 7. 3 Mod. Ent. 84. & ſee 2. Black. 1040.] 38. H. 6. 15.

21. E. 4. 44. E. 3. 3. 11. H. 4. 9 a. Co. Lit. 344. b. Dy. 217.

ſhall not have the preſentation, by the opinions in 16. *H.* 7. [7. b. pl. 11.] & 9 *E.* 3. [25. pl. 24.] which was agreed by all. And as to the third queſtion, Whether notice ought to be given to the patron upon the reſignation, or not, it ſeemed to the three Juſtices that it ought; otherwiſe the Queen ſhall not have prerogative by the lapſe; but DYER *e contra*; and eſpecially here, where by the plea and demurrer it is confeſſed that there was default in the patron; which implies neceſſarily a notice given by the ordinary, or otherwiſe no default. Alſo, a fourth queſtion was moved, *s.* if the preſentee of the Queen, after admiſſion and inſtitution, die before induction, Whether the Queen ſhall preſent *de novo*; for her preſentation before induction is revocable by her prerogative, which is not the caſe of a preſentation by a ſubject. And by the opinion of MOUNSON and DYER it ſeems that the Queen ſhall have it, but the two others *contra*. But yet all agreed that the Queen's preſentation ſhall be always ſaid, *admitted, inſtituted, and inducted*, confirmed by precedents, and the books of ✠ 14, 22, & 33. *H.* 6. [27. 24. a. pl. 3.] & 24. & 38. *E.* 3. [29. b. pl. 31. 3. b. 4. a.] And at length the matter was finiſhed by my award; but yet that did not ſtand, but judgment was given for the plaintiff, and a writ to the Biſhop &c. on account of the opinion of the greater number of Juſtices of both Benches.

Hil. 17. El. rot. 608.

A. deviſes land to *B.* on condition to pay his wife a rent thereout. and gives her a diſtreſs if after demand it is in arrear. The heir may enter for the condition broken if not paid, without any demand; but the wife muſt make demand before ſhe can diſtrain.

1. And. 50. 1. Leon. 269. 3. Mar. 1. 7. a. Co. Lit. 144, R. 461. Rol. Contin. 425.

(13) A MAN having no iſſue, deviſed by his laſt will in writing, certain tenements in *London* to two of his friends in fee, to hold in common, upon the condition following, *s.* that they and their heirs ſhould pay an annual rent of £.7. 6*s.* 8*d.* iſſuing out of the ſaid tenements at four uſual quarter days, according to the cuſtom of *London*, to the wife of the deviſor during her life, and alſo to the new erected hoſpital of *London* for the relief of twelve poor there, four pounds annually for ever; and that if the rent ſhould be behind by the ſpace of ſix weeks after any of the days of payment, (and legally demanded) it ſhould

(13) *Mich.* 37, 38. *Eliz. C. B. Wentworth*'s caſe. [2. And. 30. Cro. Eliz. 451. Noy 55.] The rent aſſigned to the wife for dower, upon condition of non-payment to be reſtored, need not be demanded by the wife.

No judgment was given in the caſe of DYER; and it ſeemed to divers juſtices that the plaintiff ſhall recover, for this will was upon a condition which was broken.

be

be lawful for his wife to diſtrain upon the tenements; adding moreover that his full intent and will was, that ſhe ſhould annually pay the ſame rent * according &c. The rent is behind on one of the days, and no demand made at the tenements by the wife, nor by any other for her; wherefore the heir of the deviſor entered. *Quære* upon a ſpecial verdict given *in ejectione firmæ* in laſt *Eaſter* Term, Whether his entry be lawful, or not, or the penalty of the expreſs condition annexed to the eſtate of the deviſees qualified, and utterly deſtroyed by the penalty of diſtreſs added to the rent, and ſo a limitation of the payment of the rent to the wife, and the heir of the deviſor to take no advantage of the breach of the condition? And it ſeemed to MANWOOD and MOUNSON, that it ſhall be ſo intended, and that the entry of the heir is not lawful; but DYER and HARPER clearly to the contrary: and ſo was the opinion of WRAY and SAUNDERS, Chief Juſtice and Chief Baron, in the preſence of MANWOOD, at table; and that both penalties, *s.* the condition and re-entry, and the diſtreſs to the wife given for nonpayment, are good remedies, and ſureties for the firm payment of the rent to the wife according to the intent of her huſband; and as to the demand of the rent, they thought it not neceſſary for the wife to make any demand on the land; but it is payable by the deviſees at their peril if they would ſave their land; but before diſtreſs taken the wife ought to make demand.

Dy. 127.

5. E. 4. 27. Dy. 351.

29. H. 8. 33. a. Plow. 71. a. 1. Inſt. 144. a.

Lit. pl. 345. Mo. 983. cont. Pal. 321.

[1 Bac. Ab. 417, 418, Doug 486.]

Howel *againſt* Forteſcue and others.

BUCKS.

(14) APPEAL was brought by *Howel* of the death of his brother, againſt *Forteſcue* and divers others; *Forteſcue* appeared, and the others did not. And the Court was againſt the others as principals, and againſt *Forteſcue* as acceſſary, before and after the felony. And he pleaded in abatement of the writ *s.* "that whereas an "original writ of appeal is purchaſed againſt *William* "*Harriſon*, late of *Murſeley*, in the county of *Buckingham*, "*Yeoman*, otherwiſe called *W. H.* late of *M.* in the county "aforeſaid, *Yeoman*; the ſaid *Forteſcue* ſays, that neither "at the time of the purchaſing of that writ, nor ever "afterwards

In appeal of death againſt *W. H.* of *M.* as principal, and *F.* as acceſſary, *F.* may plead *nul tiel W. H. in rerum naturâ* on the day of the writ purchaſed. And if there were a *W. H.* but he not of *M.* or if he be dead before the writ purchaſed, it is good.

Averment lies againſt the ſheriff's return, in *favorem vitæ*.

Dy. 327. a. 1. Bulſt. 74.

" afterwards was there any ſuch perſon as *William Har-*
" *riſon in rerum naturâ*, as by that writ is ſuppoſed and
" this &c. wherefore he prays judgment of that writ
" &c." And the truth of the caſe was, that the name of baptiſm of the ſaid *Harriſon* was miſtaken, *s. William* for *Thomas*. And Whether this plea ſhall be largely intended in law, that if there be within the realm in any county any ſuch *William Harriſon*, this plea ſhould be tried againſt the defendant, *quære.*—Alſo the original writ was returnable *octabis Michaelis*, which was adjourned * until *craſt. animarum*, and on the firſt day of that return *s.* the 6th day of *November*, the writ was delivered to the ſheriff to be ſerved, and not before; and yet the ſheriff returned a *tarde* delivered &c. which by implication and common intendment was before the day of the return. And Whether the defendant can be received to traverſe the return of the ſheriff, *quære.* And theſe two queſtions were put to the two Chief Juſtices by the Earls of *Suſſex* and *Leiceſter*, arbitrators in the appeal; and at firſt their opinions were, that the plea ſhall not be intended of any ſuch perſon out of the county of that vill of which the party was named, *late of M. in the county aforeſaid*; and although there be of that name a *William Harriſon* in a foreign county, it does not ſignify; no more ſhall it be, if there was ſuch *William Harriſon* at the felony committed, who died before the writ purchaſed, *nul tiel perſon in rerum naturâ* is a good plea, for which ſee thereof 20. *H.* 6. fol. 33. [30. b. pl. 29.] & 27. *H.* 6. twice [6. b. pl. 2. & 8. b pl. 10.] and for the other queſtion, they thought that the defendant might have the traverſe to the return of the ſheriff, *in favorem vitæ*. And the matter before ſtands with the return *quia minus tarde cum deliberatum ſit breve exequend' poſt diem returni &c.*

Pulton 16. a. 10. H. 7. 28. a. 20. H. 6. 30.

* [349. a.]

1 Bulſt. 79.

9 E. 3. 37. a.

[2. Hawk. pl. 453.] 21. E. 4. 71. 36. H. 6. 45. 4. 34. H. 6. 27 5. E. 4. 1. b. 19. H. 7. 23. b. 2. H. 4. 14. 18. E. 4. 5. a. 7. H. 7. 4. 3. E. 4. 20. 40. E. 3. 34. 31. H. 6. 13. 33. H. 6. 45. 13. R. 2. Averment 27. [Jenk. cent. 3. c. 98. Dalton's Sheriff 191, 192. Com. dig. Retorn (G.)

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(15) THE conuſor levied a fine of his lands to the conuſee and others, and to the heirs of the conuſee, to the uſe of a ſtranger in fee; whether that extinguiſhes the execution of the recognizance or not? And it ſeems not, for the ſtatute of 27. *H.* 8. [c. 10.] of uſes &c. hath a ſaving for elder rights, titles, intereſts, actions, &c. that they then had, or afterwards ſhould have &c.

The conuſee of a ſtatute takes a fine of the land to the uſe of another in fee; this does not diſcharge. Dy. 124. 134. 362. 7. Co. 39. a. 20. a. 30. it is not extinguiſhed. 26. E. 4. 5. a. Raſt Uſes 9. [For what acts of the conuſee will diſcharge the land. See Bac. Ab. Execution (B. ſect 7.) Com. Stat. Staple (F.)]

* Eaſter

* Eaſter Term,

Beginning on the Ninth Day of April,

in the 18th Year of Queen Elizabeth,

and Ending on the Fourth of June.

The Parſon of Peykirke's Caſe.

(16) THE parſon of *Peykirke* and *Elmeton* juxta *Peterborough*, of which the Abbot of *Peterborough* was patron, and alſo owner of the manor of *Elmeton*, being a hamlet of that pariſh, at this day demanded tithe of hay and corn out of the demeſnes of *Elmeton* manor, of which the preſent Dean and Chapter of *P.* are both patrons and owners; whereas within time whereof memory runneth not to the contrary before the diſſolution of the abbey, and at the time of the diſſolution, no ſuch tithes, but only other tithes, as *of wool and lambs* &c. were paid by the farmers by leaſe, or at will, being lay perſons. Whether a prohibition upon the ſtatute of 31. *H.* 8. [c. 13.] by virtue of this word *diſcharged*, will lie or not? And by the opinion of the Juſtices and Clerks of *B. R.* prohibitions in this caſe are common &c.

Prohibition lies to a ſuit for tithes of *hay and grain*, where the lands in the hands of an abbot and his farmers have from time immemorial been charged with tithes of *wool and lambs only*.

[9. Vin. Ab. 49.]

2. Co 44.b. 48.a Hob. 44. Pal. 119. Raſt. Monaſtr. 11. 32. H 8. c. 7. Raſt. Tithes 8. 10. El. 277. b. 2 Eliz. 171. a. 6. E. 6. 79. a. Dy. 49. 170. 277. 60.

[See 3. Bur. 1273.]

(17) SOCAGE land is deviſed by laſt will in writing to *A.* in tail, remainder to *B.* and *C.* (two brothers) in tail. *A.* enters, and makes diſcontinuance, and dies without iſſue; *B.* has iſſue *D.* and dies: *D.* brings formedon in (*a*) *remainder* for the moiety, and the writ was "*et quæ poſt mortem* of the aforeſaid *A. B.* and *C.* "to the aforeſaid *D.* the ſon and heir of *B.* ought to re-

A. tenant in tail, remainder to *B.* and *C.* in tail. In formedon by the heir of *B.* the death of *C.* needs not to be expreſsly alleged, "*quæ* "*poſt mortem*, of *A. B.* "and *C.* &c. *eo quod* "*A.* died without heir "of his body," is ſuffi- "cient.

(*a*) Becauſe *B.* the father never was in poſſeſſion; for if the remainder had been executed in *B.* the right would have deſcended to *D.* and his writ muſt have been formedon in *Deſcender*. 8. Co. 89. Booth's real actions 152. F. N. B. 502. A.

"main

" main by the form &c. *eo quod* the aforeſaid *A.* died with-
" out heirs of his body" &c. without any mention made in the *eo quod* of the death of *C.* the jointenant of the freehold of the remainder. And for this cauſe the writ was challenged by BENDLOWES; *ſed non allocatur*, for the clauſe *eo quod* in the formedon in remainder or reverter, ſerves only for the extinguiſhment of the firſt eſtate tail, and not for any tenant of an eſtate for life only. And ſee this, *E.* 16. *E.* 2. [fol. 473, 474.] a good caſe. And the *Regiſter*, [fol. 243.] ſeems accordant, for the clauſe of *et quæ poſt mortem* ſerves ſufficiently to prove the death by common intendment; and the words, *died without heir*, &c. ſerve to prove the particular entail to be determined and ſpent, ſo that the remainder is executory.

7 H. 7. 7, b. 28. H. 8. pl. 90, and 91. accord. 10. E. 3. 33. Breef 69. 2.

Fit. Nat. 217. b. 218. b.

BERK.

Haley *againſt* Rownd and Others.

A. leaſes 10 acres of his rectory for 10 years, and afterwards makes a leaſe of the entire rectory to *B* though no attornment of the 10 acres, yet they paſs, being parcel of the rectory, and after the 10 years *B.* ſhall have them.
Mich. 16, 17. Eliz. rot. 107 Mich. 17. 18. Eliz. rot. 2000.
[Bendl. 283. S. C.]

(18) THE Dean of *Sarum*, ſeiſed of the Rectory of *Sonning* in right of his deanery, leaſed 200 acres thereof for the term of 60 years, which is confirmed by the Dean and Chapter; the leſſee entered, and afterwards within the term the Dean leaſed the rectory * itſelf for the term of 60 years to a ſtranger, to commence at a day after in the ſame year, which is alſo confirmed: and afterwards the Dean leaſed the ſaid 200 acres to another for the term of 61 years, to commence after the expiration of the firſt term, which is alſo confirmed; but no attornment was made to the leſſee of the rectory: *quære* whether the reverſion of the 200 acres paſſed in poſſeſſion, or not. The caſe in effect is, a man ſeiſed of a manor, demiſes 10 acres of the demeſnes for 10 years, rendering a rent, and afterwards demiſes the entire manor, by the name of his manor of &c. for 30 years, the term to commence at the Feaſt of *St. Michael* then next enſuing. Now, whether a leaſe and intereſt for ten years, in the ſaid ten acres, paſſes to the leſſee of the manor after the expiration of the firſt ten years, altho' no attornment be made by the firſt termor, or not? And it ſeemed to MANWOOD and DYER that it does paſs, but not as a reverſion, but as member and parcel of the manor; for the ten acres were never ſevered from the manor, but the freehold

* [350. a.]
3. Leon. 17. Dy. 307. b.

2. Rol. Ab. 121. 38. H. 6. 58. a 7. Eliz. 233. a. 5 Co. 55.
Plow. 103. b. 433. b. 422. 10. H. 6. 16. b. 28. H. 8. 26. a. Co 4. 53. b. 38. H. 35. 18. Aſſ. 2. 5. Co. 11. 7. H. 7. 8. B. N. C. 298.

[By 4. Ann. c. 16. § 9 attornment is rendered unneceſſary in all caſes. Dougl. 282, 283.]

[Vide ante 103. a. pl. 6.

freehold and fee thereof remained always parcel and member of the groſs, and body, and name of the manor; and ſo was the opinion of WRAY, Chief Juſtice, at table afterwards; but HARPER *e contra.*

Bendloſe [fol. 287] reports the caſe to be adjudged according to the opinion of HARPER: and afterwards judgment was given that the plaintiff ſhould be barred becauſe] the Judges ſaid that the reverſion of the ſaid tenements in the Count paſſed by the ſaid leaſe, made to the ſaid *Will.' Barter*, who was himſelf the leſſee of the rectory for ſixty years without any attornment; for they were parcel of the ſaid rectory: and the leaſe made of the ſaid 200 acres for ſixty-one years, was void acording to Bendl.

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(19) IN *quare impedit* the plaintiff recovered, and had a writ to admit his clerk, directed to the Dean and Chapter, guardian of the ſpiritualties, *ſede vacante epiſcopatûs*, which is not returnable; and before execution of the writ a Biſhop is created. It was doubted whether the authority to execute the writ be determined in the Dean and Chapter. And it ſeems, that upon a ſuggeſtion made to the Court of this matter, becauſe nothing was done upon the writ aforeſaid, another writ may be awarded to the Biſhop, and it may be returnable if the party pleaſe &c.

DORSET.

If, during the vacancy of the ſee, a writ to admit goes to the guardians of the ſpiritualties, which is not returnable; and before it is executed a new Biſhop is created; the plaintiff upon ſuggeſtion may have a new writ to the Biſhop returnable: but whether their power is determined by the creation, *quære.* Dy. 260. 2. Inſt. 398. 17 E. 3 23, 24. E. 3. 25. 2. Ro. Abr. 590. 31. H. 6. 10. 8. Co 69. [Palm. 464. but ſee 3 Salk. 72. Gibſ. Cod. 114.] [Wats. Cl. L. 297, 8.]

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(20) A BOND of £.200 is made to two to pay them *s.* one hundred pounds to one of them, and the other hundred pounds to the other. One of the obligees dies, and his executors ſue for the one hundred pounds: whether the entire £.200 ſhall not accrue to the ſurvivor, *quære.*

Bond to *A.* and *B.* in £.200, to pay, *s.* £.100 to *A* and £.100 to *B.* *A.* dies; whether *B.* ſhall take the whole, *quære.* 4. Co. 4. E 4. 4. 29. 5. Co. 19. 55. Plow. 141. 153 16. H 7. 7. b. 14. E. 4. 7. 9. H. 6 25. b. 32 H. 8. 48. a. 2. E. 4. 36 4. Co. 47. Perk. 36. b. Simile poſt 351. b Hoe and Mace's caſe. [See Hob. 172. Co. Lit. 180. b. and Mr. Hargrave's note (1.) there, 3. Bac. Ab. 696. Shep. Touch. 363.]

(20) *Mich*: 41, 42 *El.* rot. 2504 *Shaw* v. *Sherwood* [Ow. 127. Cro. Eliz. 729.] Debt upon bill for £ 20. the bill was, "*Memorandum* that I *Will Sherwood*, have received of *Thomas* "*Bettie* £.40 to the uſe of *Robert Shaw* and *Eliz.* his wife, equally to be divided between them; "which ſaid ſum I do acknowledge myſelf to have received to the uſes aboveſaid, and the ſame to "re-deliver again at ſuch time as ſhall be thought moſt fit for the profit and commodity of the ſaid "*Robert Shaw* and *Elizabeth* his wife." *Robert* died inteſtate, and *Shaw* the plaintiff took adminiſtration, and brought debt againſt *Sherwood* for £ 20. And agreed by WALMESLEY, GLANVILL, and KINGSMILL, that it is a debt due to *Robert Shaw* and *Elizabeth* his wife; and *per totam Curiam*, if it is a debt, it is a divided debt and not joint; for there GLANVILL ſaid, that there may be ſeveral bills to ſeveral men of ſeveral ſums; *s.* £.20 to one, and £.20 to another in one deed. *Ex Lib. Mri. Andrews.*

Mich. 21, 22. *Eliz. C. B.* it was reſolved by the Court in the caſe of DYER, that the £.200 ſurvives, and theſe words *s.* one hundred pounds to one, the other hundred pounds to the other. are void words.

* Eden

* Eden *againſt* Harris.

Deviſe to two in tail, who *by parol* make partition, this is void, and the ſurvivor ſhall take the whole.—*Secus*, if they have only a term. [Bendl. 257.] S. C. 1. And. 50. 17. E. 3. 51. a. Tayle 15. Co Lit. 30. a. 187. 183. a. [169. a and Mr. Hargrave's note (2.)] 31. Aſſ. 3. 1. Co. 84. b. 33. H. 6. 30. a. 18. E. 3. 36. b. Coke 6. 12. 14. Eliz. 303. b. 8. Aſſ 33. Godb. 94. Dy. 29. a. 30. H. 8. B. N. C. 133. 2. Eliz 179. a 3. H 4. 2. a. 19. Aſſ. 1. 47. Aſſ. 8. 3. E. 4. 9. a. [Cro. Eliz. 95.]

(20) A MAN ſeiſed in fee of ſocage land had iſſue two daughters, and deviſed the land to the two daughters and to the heirs of their two bodies lawfully begotten. They took huſbands, and the huſbands and wives at their full age made partition by parol: and the one huſband had iſſue, and his wife died; Whether the other huſband and his wife ſhall have the whole by the ſurvivor, or not, was doubted by ſpecial verdict in treſpaſs. And the opinion of all the Court, without argument at the Bar or Bench, was, that the ſurvivor ſhall have the whole; for the partition *by parol* is void, made by jointenants or tenants in common of eſtate of inheritance; but of a term peradventure the partition is good.

WILTS.

The King grants *ex certâ ſcientiâ*, "a rectory "and all hereditaments "parcel of, belonging, "or appertaining there-"to, in as ample man-"ner &c." the advowſon of the rectory paſſes. If the patentee of the King of an advowſon where the patent was void, and the advowſon did not paſs, preſent twice, and his clerk is inducted, he has gained poſſeſſion by this uſurpation even againſt the King, and at the next avoidance, if diſturbed, may maintain aſſiſe of *Darrein preſentment*. Trin. 16. Eliz. rot. 1348. Lone. [Wats. Cl. Law. 127.] 2. Ro. Ab. 185. 10. Co. 65. a. Jon. 23. 7. E. 3. 5. Quar. Imp. 19. 16. E. 3. Grants 56, 57. 5. E. 2. Quar. Imp. 165. 33. H. 6. 14. Dy. 323. b. 26. Aſſ. 53. [1. Com. dig 283 Shep-Touch. 88.] 43. E. 3. 22. b.

(21) *E.* ſeiſed in fee of the Rectory of *Weſt Bodwin*, impropriate holden of the King, and alſo of the advowſon of the vicarage appendant thereto, was attainted of felony in the time of *Ed.* 6. But the eſcheat of the rectory, to which &c. and the annual revenues and profits of it were concealed from the King, and at all times ſince, until the 7th year of the now Queen, that the eſcheat and concealment were found by inquiſition; ſince which time the Queen who now is, by her letters patent for money and other conſiderations, and *of her certain knowledge, ſpecial grace, and mere motion*, granted all the poſſeſſions of the glebe and tithes of the rectory by ſpecial and particular names, and generally *all her hereditaments whatever parcel of, belonging, or appertaining to the ſaid rectory in Weſt Bodwyn* (but no expreſs mention made of the rectory or advowſon) &c. *as fully and in as ample manner and form, quality and condition, as the ſaid E. had them &c. and as they came or ought to have come to the hands of the ſaid Queen*, with this proviſo, *s.* that if the premiſes were not concealed &c. but that the iſſues and profits were accounted for to King *E.* Queen *M.* or to the Queen who now is, ſince the attainder, then the letters patent ſhould be void; the

(21) *Mich.* 31, 32, *Eliz. C. B. Quare impedit* by *Denny* v. *Aſtill*. [1. Leon. 191. Cro. Eliz. 163.] The King hath the advowſon of the vicarage of *D.* and grants his vicarage of *D.* the advowſon of the vicarage does not paſs.

patentee

patentee preſented to the vicarage, and his clerk was admitted, inſtituted &c. and afterwards reſigned; the patentee preſented again, and is diſturbed, and brought aſſiſe of *darrein preſentment*, and gave all this matter in evidence to the Jury taken by default in *C. B.* whereupon the defendants demurred, but no averment was taken in the evidence by the counſel, of the concealment, or that the iſſues and profits were accounted for &c. ſince the attainder, to ſerve and ſatisfy the proviſo alleged by the plaintiff * himſelf:——*quære* if he ought of neceſſity. (22) Alſo *quære* Whether the advowſon paſſed as in groſs or appendant by the general word "hereditament," becauſe it belonged to the rectory? and admit that it did not paſs, ſtill Whether the patentee hath gained the advowſon of the Queen by (*a*) uſurpation as he ſhould have done of a common perſon, or not? And by the opinion of the Court in *E.* Term next, judgment was given for the plaintiff, and that by the general words above the advowſon of the vicarage paſſed, and the parſonage alſo, and this by the words *as fully* &c. *as* &c. and *of ſpecial grace, certain knowledge &c.* So the Queen by ignorance was not deceived &c. And, altho' it did not paſs, ſtill by reaſon of the patronage and advowſon gained by the laſt preſentation of an incumbent, and by this aſſize againſt the Dean and others, ſtrangers, who make no title, he hath gained the poſſeſſion of the patronage even againſt the Queen herſelf. See *Fitzherbert*, in title *quare impedit Trin.* 18. *E.* 3. 151. by SHARD, that by uſurpation on the King he ſhall be put out of poſſeſſion of the advowſon as well as another man, and (*a*) ſhall be put to

* [351. a.]

13. H. 4. Grants 88. Dy. 48. b 6. E. 3. 56. Garranty 61. 5. E. 3. 66 Livery 7. 19. E. 2. Breef. 844.

H. 40. Eliz. C. B. Nicholl's caſe, adjudged accord. 43. E. 3. 22. Stamf. 44. 9. Co. 32. a. 43. Aſſ. 10. 10 Co. 61. 43. Aſſ. 16. 1. Ro. Ab. 371, 2. 370. 2. Ro. Rep. 7.

18. E. 5. 15.

6. Co. 30. a. 4. H. 7. 1. b. 1. H 7. 19. a. 28. H. 8. 24. b. 47. E. 3. 4. b. 1. H. 4. 1. a.

(22) If the King claim only a chattel real in the advowſon, an uſurpation puts him out of poſſeſſion, as a common perſon. † *Beverley* and *Converſly's* caſe adjudged 28. *Eliz.* rot. 412. *Trin.* 30. *Eliz.* rot. 1306. Stamf. prerog. 32. b. 18. *E* 3. 16. *Quare imp.* 136. 43. *E.* 3. 14. 4 *E.* 3. 4. [1. b. pl. 3.] and *Enſt.* 2. *Jac. C. B.* rot. 1331. *Quare impedit* by the *King* againſt the Biſhop of *Wynton*, *Champion* patron, and *Matthew* incumbent. [Cro. Jac. 53. Noy 18.] It was adjudged, according to theſe books, that the King is put to his writ of right, for theſe preſentments where there is inſtitution and induction. But *Trin.* 4 Jac. *B. R.* [Yelv. 90. Cro. Ja. 123. 1 Brownl. 166.] in error that was reverſed, and all thoſe books denied to be law; for by POPHAM, if one uſurpation does not put him out of poſſeſſion, many ſhall not do it; for by the death of the firſt incumbent the King may preſent, or have *quare impedit* againſt him, which he pleaſes. *Ex Lib. Mri.* Noy.

(*a*) But by 7 *Ann.* c. 18. No uſurpation upon any avoidance in any church, vicarage, or other eccleſiaſtical promotion, ſhall diſplace the eſtate or intereſt of any perſon entitled to the advowſon or patronage thereof, or turn it to a right; but he or ſhe that would have had a right if no uſurpation had been, may preſent or maintain his or her *quare impedit* upon the next, or any other avoidance if diſturbed notwithſtanding ſuch uſurpation.

his

7. Co. 28. a. Stamf. 33. Fulb. 31. 1. E. 3. 23 a. Eaſt. 13. Eliz. 36. 25. Eliz. adjudged that theſe preſentations ſhall not put the king to his writ of right.

his writ of right as well as another man; to which all the other Juſtices agreed. And *M.* 16 [*F.* 3. *Fitz. Ab. Quare impedit* 147.] & *T.* 38. *E.* 3. 13. a. pl. 10.] the King brought a writ of right of the fourth part of the tithes and offerings of the Church of *Saint Dunſtan*'s in the *Weſt*, in *Fleet Street*, *London* &c. and it was allowed well. And likewiſe *T.* 35. *H.* 8. [*H.* 6. 60. pl. 1.] the King may gain an advowſon by preſentation, and plenarty for ſix months, without any title even againſt an infant purchaſer.

[See Wats, Clerg. Law, 127, 277.]

* Trinity Term,

18 Queen Elizabeth.

Beginning 22d June, and ending 11th July.

Creſwell *againſt* Cokes.

Tenant by heriot cuſtom, holding of ſeveral lords, makes a fraudulent gift of his beaſts. Any lord may ſue on 13. El. c. 5. for the value of all the beaſts. But ſee 2 Leon. 8. S.C. that he ſhall recover but the value of one. Co. Lit. 290. Raſt. fraudulent deeds, 1. [3. Lev. 354. 3. Bac. Ab. 606. 1. Salk. 32.]

(23) A MAN held divers tenures of divers lords by heriot cuſtom; and he to defraud one of his lords of his heriot, made a fraudulent gift of all his heritable beaſts, which were twenty horſes. And the lord, ſpecially aggrieved, brought an action of debt as well for the Lady the Queen as for himſelf upon the ſtatute of the 13th of the now Queen, [2. 5.] demanding the value of the twenty horſes &c. And by the opinion of HARPER and DYER the action well lies by the intendment of the ſtatute; for it may be that he never might happen to ſeize his heriot, and if he ſhould only recover the value of his heriot according to his grievance, then the Queen would have the half of that, wherefore &c. But MANWOOD *e contra*, becauſe the other lords are as much aggrieved

(23) *Mich.* 10. Jac. *C. B.* ✝ *Hoe* and *Mace*. Commiſſioners of bankrupts aſſigned a bond of £. 20 to *A.* and *B.* ſeveral creditors, to each of them £. 10. COKE and WINCH held, that the commiſſioners have power ſo to do, and that the aſſignees may have ſeveral actions. The like *ante* fol. 350. pl. 20.

grieved for their heriots, and recompenſable for them, as the plaintiff is, and the makers of the ſtatute never intended to recompenſe one, more than according to his grievance and damage &c. therefore each of them ſhall have a ſeparate action &c. And HARPER held that all the lords might join in one action. But *quære* this.

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(24) LAND of ſocage tenure was given to a huſband and wife in tail, remainder to the right heirs of the huſband in fee: they have iſſue; the huſband alone levies a fine with proclamations, which is to his own uſe; and afterwards the huſband by his laſt will in writing deviſes the land to his wife for term of her life, remainder over to a ſtranger in fee, with a condition to pay a rent out of the land annually, and a clauſe of diſtreſs annexed to it &c. And afterwards he dies, and his wife enters, claiming only an eſtate for term of her life, and pays the rent according to the will; and afterwards ſhe dies. Whether the iſſue in tail, or the deviſee in remainder ſhould have the land, was demurred in law in replevin, where all the caſe appeared in avowry made by him in the remainder for damage feaſant &c. And by the judgment of the Court, given this term, the iſſue in tail was barred; partly becauſe his mother had waived the eſtate tail; and altho' ſhe had not, yet his conveyance to the title and deſcent of the entail of neceſſity muſt be made as heir of the body of his father as well as of his mother; wherefore the fine with proclamations levied by the father only bars the entail.

Huſband and wife tenants in ſpecial tail. The huſband alone levies a fine to the uſe of himſelf, and deviſes the land to his wife paying rent, remainder over; ſhe enters on his death and pays the rent, it is a waiver of her remitter. And the fine bars the iſſue who muſt claim thro' both.
Co. 87. b. Co. 8. 72. b. 9. Co. 139 a. Co. Lit. 357. a. Weſt's Precedents Fines, fol. 67. Sec. 184. Hob. 71. a. 255. 257. 333. Dy. 127. 348 332. Co. Mag. Ch. 681. 11. Aſſ. 14 3. Co. 26. b. 1. Brn'. 140. 1. Leon. 84. Mo. 493.
8. H. 4. 11. b Dy. 191. 123.

5. H 7. 33. a. Dy. 332. b.
[Cro. Car. 477, 478. Cruiſe Fines 157, 158. Shep. Touch. 23.]

(24) The wife in this caſe had election, whether ſhe would be in of her remitter or not; becauſe if ſhe had been remitted, it would not have been beneficial to any other; for the fine of the huſband bars the iſſue and all others. This reaſon was given by DODDERIDGE, *Trin.* 16 Jac. in the argument of *Barbara Woods* v. Sir *John Sherly*. Mr. *Maſon*'s reports [2. Rol. Rep. 36]
Land is given to the huſband and wife in tail, the huſband hath iſſue and dies, and the wife refuſes; *quære* whether the iſſue may enter, for he cannot convey by both.

Coxe's Caſe.

(25) COXE, Chaplain to the Archbiſhop of *Canterbury*, having a benefice of the patronage and gift of the Queen, obtained a diſpenſation for a trialty of the Archbiſhop

The Archbiſhop's chaplain got a diſpenſation to hold a trialty, confirmed by the King with a *non obſtante*. He had

one benefice before, and now took two others, the firſt is void by 21. H. 8. c. 13. [See Vin. Ab. 364 & 365. in notes] Dy. 327. pl. 4. & 5.

Dy. 347. 11. Co. 86.

[1 W. & M. ſ. 2. c. 2. § 12.]

Raſt. reſidence 2.

Raſt. Rome 5.

Raſt. Rome 3.

Raſt. Corone 6.

Mo. 442.

Archbiſhop his lord and maſter, to take, have, and enjoy three incompatible benefices; which diſpenſation the Queen confirmed under the great ſeal, * with theſe words, ſ. " So that all and ſingular in theſe letters ſpecified he " may enjoy and poſſeſs freely, quietly, and with impu- " nity, without hinderance &c. any ſtatute, act, or re- " ſtriction to the contrary thereof made and provided, or " any other matter, cauſe, or thing whatſoever in any wiſe " notwithſtanding &c." by force of which he obtained two other benefices incompatible. Whether the firſt of the three be void by the ſtatute of 21. *H.* 8. [c. 13.] or not, was demurred in law in a *quare impedit*, brought by the Queen againſt *Coxe* and the Biſhop; in which caſe a great queſtion is made, and particularly among the civilians, whether the act of 21. *H.* 3. be revived by the 1ſt of the preſent Queen, [c. 1.] in the articles or points touching diſpenſations for nonreſidence or pluralities, which was repealed by 1. & 2. *Ph.* & *M.* [c. 8. § 4.] in that part.— Note, that ſo much of the act of 21. *H.* 8. as concerns the procuring or obtaining diſpenſations from *Rome* for pluralities or nonreſidence, and all words and ſentences concerning it, and alſo the entire act of 25 [*H.* 8. c. 21.] for the granting of diſpenſations at *Canterbury* are repealed by the act of 1. & 2. *P.* & *M.* c. 8. and by the act of 1. *El.* the entire act of 1. & 2. *Ph.* & *M.* is repealed; and alſo that part of 21. *H.* 8. and no words of revival of it, for that would have been merely contrary to the intent of the act. But in the act of 25, which is revived, there is a proviſo and reſtraint to *Canterbury* for diſpenſations derogatory or contrary to the act of 21, which affirms 21 to be *now in eſſe* and force. And in the next term judgment was given for the Lady the Queen without argument.

An abbot makes a leaſe for ſixty years to *B.* who leaſes for eighty to *C.* the reverſion comes to the King, to whom after the ſixty years *C.* ſurrenders, *eâ intentione* that the King ſhould grant it him for the other twenty, which he does *ex certâ ſcientiâ* reciting the old leaſe; but the King is deceived, and may avoid this grant.

(26) AN Abbot and his convent by their deed indented, make a leaſe for 60 years to another abbot: the leſſee, during the term, with the conſent of the convent, makes a leaſe over by indenture for more years, ſ. for 80 years; and the reverſion afterwards comes to the Queen: and then the ſecond leſſee, after the expiration of the 60 years makes a ſurrender to the Queen of his indenture, right, eſtate, and intereſt, *eâ tamen intentione*, that the Queen

Queen ſhould vouchſafe to make to him a new leaſe for 20 years, being the reſidue of the more years. The Queen reciting the ſecond indenture, intereſt, and ſurrender that the ſecond leſſee had made, (which is worth nothing) accepts the ſurrender; and in conſideration thereof, and for divers other good conſiderations, of her own ſpecial grace, certain knowledge, and mere motion, demiſes and * grants the premiſes to him who ſurrenders, for the ſaid term of 20 years, rendering the ancient rent. Whether the Queen may avoid the leaſe by reaſon of any fault or falſity in the ſurrender &c. in the grant of 20 years, in which ſhe ſeems to be deceived &c. was the doubt. But afterwards, by the opinion of WRAY, SOUTHCOT, and MANWOOD, being aſſembled in the Exchequer Chamber for other cauſes, at the requeſt of the Lord Treaſurer, it was holden that the demiſe and grant above was void, becauſe the Queen was deceived in her grant; but DYER being alſo there, *e contra*, becauſe there is no ſuggeſtion or information, but a conſideration; which, altho' it be falſe, is nothing to the purpoſe; which ſee by FITZHERBERT, 27. *H.* 8. [26. *H.* 8. 1. b. pl. 4.] and *Brooke tit. Patents* [100.] 37. *H.* 8. And ſee *H.* 7. [Anno 3. fol. 6. pl. 4.] in the return of a writ *de corodio habendo*, in the priory of *Norwich*.

1 Co. 43. a. 143. Rol. contin. 273.

5. Co. 94. a. 10. 68. a. 3. H. 7. 7. a.

* [352. b.]

1. Co. 143. a. 2. H. 7. 6. b. 8. H 7. 3. b.

6. Co. 55. 9. H. 6. 28. b. 3. H. 7. 3. b. 1. Co. 43. 44. 21. E. 4. 48. 37. H. 8. B. 310. Dy. 269. 337. a. 2. Co. 54. a. b. [Com. dig. Grant G. 9.) Vin. Ab. Prerogative (Q. b.) (M. c.)

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(27) THERE is a cuſtom in the city of *London* called cranage, *s.* that the mayor for the time being ſhould have of every alien who brings any ſalt to the port of *London* the 20th part thereof. An alien brings 28 [160] weys of ſalt to the ſaid port, whereof part was his own and part of his neighbours; who for himſelf, and alſo for his neighbours at their requeſt, for a certain ſum of money between him and the mayor agreed on, undertakes and promiſes to the ſaid mayor to content and ſatisfy him *whatever ſhould be due for the ſalt and cranage aforeſaid.* And in an action upon the caſe for the breach of this undertaking, the plaintiff declares in fact

An alien undertakes to ſatisfy the mayor, whatever ſhall be due for the cranage, for ſalt imported into London, which by the cuſtom is the twentieth part. In aſſumpſit, the mayor declares that the defendant hath not yet ſatisfied him *for eight weys, being the twentieth part for the cranage aforeſaid*, and good, as if he had ſaid *hath not ſatisfied the twentieth part.*

(27) Note, the promiſe was not of any thing in certain, and yet Aſſumpſit maintainable; and ſo it was adjudged in *Fielhouſe* and *Wood's* caſe, *Mich.* 3 [illegible] which caſe is cited before [fol. 91 a. in margine] ſo *Eaſt.* 31 *Eliz.* † *Povay* v *Haſil.* Aſſumpſit upon promiſe to pay him his charges for going to *Paris*, and as much as will content him; and judgment for the plaintiff.

that

8. Co. 47. a. 3. Keb. 275 20 Eliz 360. and the books there cited. [4. Mod. 322, 323. 1. Vent. 298.]

that the aforeſaid defendant, the aforeſaid plaintiff " for " eight weys of ſalt, being the 20th part of the ſalt afore- " ſaid, for the cranage aforeſaid, hath not yet contented " or ſatisfied, altho' often requeſted" &c. Whether the declaration be bad becauſe he ſays *for the aforeſaid eight weys*, or ſhould he ſay, *the eight weys of ſalt aforeſaid &c. hath not yet ſatisfied or contented*, which was the very expreſs duty in truth, was doubted in error in *London*. And by the opinions of MANWOOD, Juſtice of the Bench, DYER and WRAY, Chief Juſtices of each Bench, that is not error; becauſe in the words, that the defendant hath not contented or ſatisfied the plaintiff *for the eight weys of ſalt*, is implied neceſſarily that the eight weys themſelves, which is the duty of the cuſtom of cranage, are not contented or ſatisfied &c. which thing, by the demurrer in law upon the declaration, is confeſſed by the defendant, and ſo the undertaking not performed.

Stepkin's Caſe.

* [353. a.]

To an information for an intruſion, defendant pleads a grant from *A. per nomen* of all that land &c. containing 100 feet in length, and 155 in breadth; replication traverſes that *A.* did grant *per nomen* &c. containing 155 feet *in length*, (which was *the breadth* in the grant) and taking no notice of any *breadth*, and concludes to the *country*. The verdict found that *A.* did not grant *per nomen* &c. containing 155 feet *in length, prout the defendant in bar* alleged, inſtead of *prout the attorney for our Lord the King above alleged*. And the judgment for theſe errors was afterwards reverſed. Co Lit. 125. b. Roll. cont. 187.

(28) AN information of intruſion was exhibited in the Exchequer againſt *Stepkin* and two others, for an intruſion into fifteen houſes or tenements, and twelve gardens to them appertaining, * in the pariſh of *Saint Botolph without Aldgate, London*, in the ſeveral tenures of fifteen ſeveral perſons. *Stepkin* alone appeared, and as to all except ſeven of the ſaid tenements and gardens he pleaded not guilty; and as to the ſeven he conveyed a title in them to himſelf from the King *H.* 8. by letters patent in his 36th year, by the name of all that parcel of land called the Great Garden, lying towards the brewhouſe, called the *Swan*, *containing in length* from eaſt to weſt towards the ſtreet 100 *feet of aſſize*, and *in breadth* from the north towards the ſouth, 155 *feet of aſſize* &c. The Attorney-General replied, and maintained the information for all the premiſes, and alſo againſt all three defendants, " *abſque hoc* that the ſaid *H.* 8. by his letters patent afore- " ſaid, did grant all the aforeſaid meſſuages or tenements, " and gardens, by the name above in the bar, *containing in* " *length* 155 *feet*," which in the bar was the *breadth*, and no mention of the breadth in the traverſe. And upon that iſſue

iſſue was joined: and found by verdict, that *H.* 8. by letters patent &c. did not grant all the tenements aforeſaid, nor any of them by the name &c. *verbatim* as it is in the traverſe of *abſque hoc*, concluding their verdict, with a *prout the aforeſaid defendant hath in his bar alleged*, where it ſhould be *prout the Attorney, for the Lady the Queen hath above alleged*; inſomuch that the iſſue was found for the Queen. Upon which verdict judgment was given in the Exchequer; whereof error was proſecuted &c. ſuppoſing no iſſue to be joined, becauſe the traverſe and the verdict contained more feet in length than is alleged in the plea; and the verdict is true, for the defendant did not allege any ſuch grant of the length &c. (29) *Quære* why the plea is not diſcontinued; becauſe two of the defendants never appeared, nor was any proceſs made againſt them, nor any anſwer &c. And *quære* of diſcontinuance in the caſe of the Queen after verdict, whether it be aided by the ſtat. of *Jeofails* 32. *H.* 8. [c. 30.] Note, the plea of the Attorney above which has an *abſque hoc* in it, he firſt joined the iſſue to the country, *s. and prays that this may be inquired of by the country* &c. whereas in reaſon the other party affirmative ought orderly to have firſt joined the iſſue with, *and of this he puts himſelf upon the country*, if he be defendant; but if he be plaintiff then he ſhall ſay, *and this he prays may be inquired of &c.* For the common pleading is when an *abſque hoc* is taken, which is as much as a negative, there ought to be a rejoinder to it *s. and the aforeſaid defendant or plaintiff as before ſays that &c.* and *of this he puts himſelf upon the country* is affirmative, *and the aforeſaid plaintiff does the like*, which is negative. And thereupon the *venire facias* ſhall recite the iſſue, whether it be ſo as the affirmative party ſaith, or not, as the negative party ſays, *becauſe as well &c.* And afterwards for the error in the verdict, the judgment was reverſed.

Dy. 342. a. 53. Co. Lit. 125. b. 260. a. 2. Keb. 319. Dy. 44.

R. 99.

7. H. 9. 5. 11. Co. 7. 22. E. 4. 3. b. 49. E. 3. 24. 3. H. 6. 8. b.

2. Ro. Rep. 63. 1. Keb. 766. 26. H. 8. 3. b.

Co. Lit. 126. a. [Com. dig. Pleader (E. 32.)]

5 Car. Cro. 164. 6. H. 4. 3. [3. Mod. 203. 1. Salk. 4.] 9. H. 6. 58.

14. H. 4. 10.

Dy. 316.

* Michaelmas Term,

18 & 19 Queen Elizabeth.

Adjourned *in Menſe Michaelis*, on account of the Plague at *Weſtminſter*.

Blour's Caſe.

B. a layman, inducted into a benefice, was deprived by ſentence in the eccleſiaſtical court; but pending that ſuit, a *quare impedit* was brought againſt him and the Biſhop, and judgment therein by default. On which deceit for non-ſummons was brought by the Biſhop and *B.*; and to both was pleaded in bar the ſentence of deprivation: holden no plea, and the former judgment vacated.
Dy. 292. 5. Co. 102. 27. H. 8. 1. b. 10. R. 2. Tryal. 200. Dy. 328. 7. El. 241. b. 5. H. 7. 22. a. Fitz. 38. b.
‡Hoc fuit erronice, quia non conſtat curiæ qd' fuit aliquis incumbent. [F. N. B. 224. G. Jenk. 69. pl. 31. ſub fin.]

(30) ONE *Blour*, being within the age of 24 years, and a mere layman, having no clerical order, obtained the benefice of *Worthin*, in the county aforeſaid, which is diſtant from *Weſtminſter* 124 *leagues*, *s.* miles. And for this cauſe of inſufficiency, one *Corbet* proſecuted againſt him a citation out of the Queen's Court of Delegates, to deprive him by ſentence declaratory; pending which ſuit one *Williams* brought a *quare impedit* againſt the ordinary, *s.* the Biſhop of *Hereford*, and *Blour*, naming him *clerk*, and recovered by default at the grand diſtreſs, and a writ awarded to the metropolitan, (becauſe the Biſhop of *Hereford* was a party,) ‡ commanding him to amove *Blour*, and to admit the clerk of *Williams*; which was executed; and one *Griffin* admitted and inſtituted accordingly, and inducted. After which the Biſhop of *H.* and *Blour*, brought a writ of deceit in *C. B.* againſt *Williams*, and the ſheriff, and the ſummoners, for not ſummoning *Williams*; and the ſummoners appeared, and not the ſheriff; and the ſummoners ſeverally examined upon oath, denied any ſufficient ſummons on account of the ſhortneſs of the time before the day of the return of the writ &c. reſpect being had to the diſtance of the place. (31) And *Williams* pleaded in bar of the writ of deceit

Dy. 203, 204.

(30) This caſe well argued 24. *El. C. B.* & *Yelverton*'s Rep. 72. and judgment given as here by ANDERSON, RHODES, PERIAM, and MANWOOD.

(31) *E.* 37. *El.* & *Barton Lever*'s caſe. FENNER † *ſaid*, that this caſe was argued again 24. *El.* and ruled, that he ſhall not have deceit, becauſe he cannot be reſtored to the benefice after deprivation.

† Orig. *Defendant.*

this

this disability of *Blour*, and sentence of deprivation by sentence declaratory given by Doctors GIBBONS and HUSSEY, Judges delegatory &c. supposing thereby that he may not be restored to his former title and interest in the church &c. Whereupon the Bishop and *Blour* demur in law. And note, that this plea was pleaded in bar as well against the Bishop as against *Blour*, and therefore is bad; wherefore judgment was given that the first judgment should be annulled and vacated, and the plaintiffs restored to all that they lost &c. for the incumbency is not in question, but the disturbance of the plaintiff in the *quare impedit* to present to the church, which was void by the supposal of the writ; * and the matter of the deprivation, or removal of *Blour* from the church is not in question by this recovery in *quare impedit* by the defendant, by which suit the plaintiffs in this writ of deceit were damnified &c. And upon this judgment, *Williams* brought a writ of error, [1. *Leon.* 293.] and for discontinuance the judgment was reversed, but not for any matter in law.

15. Ass. 8. F. Nat. 98. G.

* [354. a.]

3. H. 6. 9 a.

Therefore, note that he was not restored to the incumbency again in the writ of deceit; because he did not lose it by the supposal of the writ of *quare impedit*, which supposes the church to be void.

Barrough's Case.

(32) IN the conveyance by indenture of the assurance of the possessions of *Edward Barrough* for default of heirs male of his body, to his uncle *Anthony Barrough*, and to the heirs male of his body, and for default of such heirs to the right heirs of the said *Edward*, whereof a fine was levied for that purpose, there was a proviso penned by *Gyles Escourt* in this form, s. "That if *Edward B. at any time during his life*, should "be minded to alter the estate or estates, or any use, "and do pay or cause to be paid, or tendered unto "the said *A. B.* £.20, at the font-stone within the cathe- "dral-church of *Sarum*, that then and after such payment, "or tender unto the said *A. B.* at the place aforesaid, "and in manner and form aforesaid, as well the said "*E. B.* and *A. B.* and the conusees in the fine, and their

Uses being limited to *B.* with proviso if *A.* during his life do pay or tender to *B.* £.20 at the font-stone in the church of *S.* then other uses; *A.* is bound to give notice of the time when he will make the tender.
Co. Lit. 211. a. 8. Co. 92. b. 3. Keb. 19. 1. Ro. Abr. 449. 2. Bulst. 143. 2. Keb. 816. 5. Co. 114. 2. E. 4. 4. a. 3. Bulst. 326. This case denied to be law, fol. 23. pl. 127. Dy. 311. pl. 84. R. 655. 13. Co. 2. [Cro. Jac. 9. 3. Cas in Chan. 67 Powel on Powers, 232.]

(32) The opinion of POPHAM, *Hil.* 31. *Eliz.* [Cro. Eliz. 298.] was accordingly. And he said that so it was in † *Tucker's* case adjudged. 6. Co. 31.

" heirs, as all other perſons, and their heirs ſhall ſtand, and " be ſeiſed to the uſe of the ſaid *E. B.* and of his heirs for " ever &c." *Quære* if a readineſs or tender of the ſaid £.20 at the place according to the proviſo, in the abſence of the ſaid *A. B.* or any deputy or ſervant appointed to receive it for him, and no notice of the time given by *E.* to *A.* before, be a ſufficient fulfilling of the proviſo, or not. And it ſeems by the opinion of WRAY, DYER, and MANWOOD, not; becauſe no day or time certain is limited to attend the receipt &c. But *during the life of E. B.* which is uncertain to *A. B.* &c.

Ceſtuy que uſe in the time of *E.* 4. deviſed the land "*to his ſon and his heirs for ever, provided that if he die without iſſue, living his executors, they ſhall ſell,*" this is no eſtate tail, or gift of the land itſelf. 3. Mar. 122. a. Co. Lit. 21. a. 1. Sid. 148. Vaugh. Rep. 259. 21. H. 7. 19. Dy. 74, 142, 331. [See the books cited to the caſe of Pells and Browne, Cro. Jac. 590. 1. P. W. 54. & fol. 124. pl. 38. ante]

(33) *CESTUY que uſe* in the twelfth year of *E.* 4. deviſed by his laſt will his land in *Enfield* to his ſon, to have and hold to him and his heirs for ever, provided nevertheleſs, that if he die without iſſue, or iſſue fail, living his executors, the land ſhould be ſold by the executors. And the executors died before the deviſee; and the heir of the body of the deviſee, ſuppoſing the deviſe to be an eſtate tail, brought formedon, and ſuppoſed by the writ and count a general gift of the land in tail, and the eſplees in the time of *Edw.* 4. and the tenant pleaded *ne dona pas*; and a jury of *Middleſex* was at the bar, and charged with the iſſue. But the opinion of the Court was againſt the demandant, and that it was not any entail above, nor any gift of the land itſelf &c.

(33) *Mich.* 18. Jac. *B. R. Pells* and *Browne*'s caſe, [Cro. Jac. 590. Bridgm. 1. Palm. 131 2. Rol. Rep. 196, 216. Godb. 282.] *Will. Brown* had iſſue *Will.* and *Thomas*, and deviſed the land in queſtion to *Thomas*, and his heirs for ever, paying £ 20 to *Richard* another ſon of *Will.* within a year after he comes of full age, and if *Thomas* die without iſſue, living *Will.* then *Will.* ſhall have it to him, and to his heirs. *Per Cur' Thomas* hath an eſtate in fee conditional, and not an eſtate tail. And this caſe was adjudged upon this book of DYER; and DODDERIDGE *Juſtice*, ſaid, that if *Tho.* had ſuffered a common recovery, it had barred the remainder upon contingency; but the three other judges againſt him.

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* Sir George Calverlye's Caſe.

A *feme covert* with her ſecond huſband, levies a fine of her land *in ea-*

(34) A *Feme ſole* tenant *in capite* had iſſue a ſon, and took a ſecond huſband; and afterwards they levied

(34) In the report at large the caſe was, to the wife for life, remainder to the ſon in general tail, remainder to the firſt ſon of the huſband and wife in tail, remainder to the heirs *of the* body

levied a fine to the uſe of the wife for life, remainder to the ſaid ſon in tail, remainder to the heirs of the body of the huſband and wife, remainder over to a ſtranger in fee; which uſes are declared by indentures, in which the huſband covenants, that if he is living at the time when the ſon ſhall be of the age of eighteen years, he will pay annually during his life to the ſon £.10. and if the wife die before the age of the ſon of eighteen years, that then he will permit during his life the ſon to have and poſſeſs the land. The wife died without iſſue of the ſecond huſband, the ſon being of the age of ſixteen years, *quære* Whether he ſhall be in ward of his body, and of † *the third part of* the land, or for nothing living the huſband. And by the opinion of the greater part of the Court at this time, CALVERLY was driven to compound, contrary to the opinion of PLOWDEN, who ſaid, that this caſe is not within the intent of the ſtatute of making diſpoſitions of lands [32. *H.* 8. c. 1.] firſt, becauſe the *feme covert* was never ſole ſeiſed, for the huſband is alſo ſeiſed: alſo, a *feme covert* has no power or will, which reſts only with the huſband: alſo, the ſtatute ſerves for advancement to be made by the huſbands to their wives and children, which things nature requireth; but not *e contra:* alſo, ſuch a caſe rarely happens, that wives give advancement of land to their huſbands; and therefore if the huſband make alienation of ſuch advancement he is not within the ſtatute of 11. *H.* 7. [c. 20.]: alſo, the chief ſcope of the making of the ſtatute of 32. *H.* 8. was at the pleaſure of the common ſubjects to make wills

pite, to the uſe of her ſon, by the firſt marriage: holden, that the wardſhip is ſaved, and the ſon was driven to compound.
But wardſhips and tenures *in capite* are taken away by 12. Car. 2. c. 24.

Dy. 259. pl. 98.

The caſe was reſolved againſt the Queen.
1. Inſt. 365. b.
Raſt. 143. b.

Dy. Willes 2.

1. Leon. 65.
4 Co. 60. b.
Raſt. diſcontinuance of Poſſeſſion.

body of the huſband and wife, remainder to a ſtranger in fee, with covenant as above in the caſe. PLOWDEN ſaid, that by this conveyance the Queen ſhall not have the ward; for 1ſt, The ſtatute extends only to conveyances made by one ſole ſeiſed; but here the wife is ſeiſed with the huſband. 2dly, The third part was given to the King in reſpect of the licenſe to make a will, and therefore does not extend to a *feme covert*, for ſhe cannot make a deviſe. 3dly, It extends only to thoſe who may give a part executed, and therefore does not extend to a *feme covert*. 4thly, The preferment ought to be by the parent only; and this was Sir *Arthur Browne*'s caſe, where he and a ſtranger made a jointure to the wife; and becauſe here the huſband who is not the parent joined with the wife, he is not within the ſtatute. 5thly, Conveyance made by the wife to the huſband for his advancement is out of the ſtatute; and the word *otherwiſe*, extends ſolely to a will. 6thly, That an eſtate being made to one who is out of the ſtatute, with remainder to the ſon, is not ſuch preferment for which the body or land ſhall be in ward during the particular eſtate, but afterwards it ſhall be. 7thly, This caſe is not within the clauſe of the ſtatute *s.* where two are ſeiſed to them, and the heirs of one of them. POPHAM, *contra* in every point; and ſaid, that the body at leaſt ſhall be in ward during the particular eſtate to the ſtranger.

[† Theſe words in *Italics*, omitted in the laſt Editions.]

Plow. 463. a. Co. Lit. 326. b. Dy. 203. b.

of land, which no one might do after the ſtatute of 27. [*H.* 8. c. 10.] therefore &c. Alſo, that the 9th article of 34. [*H.* 8. c. 5. § 14.] that a *feme covert* cannot make a will, nor an infant, nor an ideot, is idle, and to avoid ſcruples ſ. that every perſon having lands &c. And therefore it ſeems to me that the opinion of PLOWDEN is reaſonable.

Hilary Term,

19 Queen Elizabeth.

* [355. a.]

If leſſee for years be ouſted, the leſſor may have aſſize, but no damages; or he may reenter within a year, and if ouſted again he ſhall have aſſize and damages.
[Vin. Ab. Aſſiſe (D.)] 40. E. 3. 5. a. 45. E. 3. 21. 50. E. 3. 4. a. 33. H. 6. 22. b. 5. H. 7. 10. 9. E 4. 30. 48. E. 3. 4. a. 12. H. 6. 4. a. 3. H. 6. 33. b. 9. Co. 106. 15. H. 7. 46. Plowd. 191. Cro 109. pl. 5. 31. 8. H. 7. 6. 569. 1. Inſt. 238. a.

Lord Crumwell *againſt* Andrews.

(35) THE termor is ejected out of his farm; the leſſor within the year may enter to ſave a deſcent, or have aſſize at his election, but no damages. And if the leſſor be upon the land, and the leſſee will make a feoffment, it is no diſſeiſin by DYER, and BELL Chief Baron, affirmed that; but MANWOOD *e contra*, which WRAY affirmed: and DYER ſaid, that if the leſſor after * his regreſs be re-ejected, he ſhall have aſſize, and ſhall recover damages for this new diſſeiſin:—*quære*, and ſee 15 *H.* 7. 5. [4. b.]

9. E. 4. 33. Dy. 33. pl. 13. 20. El 362. b. Perk. 45. b. 1. Ro Abr. [Sayer on Damages, 10.]

Delivery of the writ of diſcharge of the old ſheriff to the clerk of the county ſitting in the county court in the abſence of the ſheriff, determines his authority.

(36) THE writ of diſcharge of the old ſheriff was brought into the country and delivered to the clerk of the county, ſitting in the county-court in the abſence

(36) *Mich.* 37, 38. *Eliz. C. B.* [Noy 51] by ANDERSON and WALMSLEY, that the old ſheriff is not diſcharged before the new ſheriff hath accepted the county from him. (*a*) [Cro Eliz. 440.] *Mich.*

(*a*) In the MS. in the *Inner Temple* Library, is the following "*Memorandum*, That | "Sir *Lewis Mordant*, Knight, being ſheriff of "the counties of *Bucks.* and *Bedf.* the Lord "*Mordant*

ſence of the ſheriff. Whether he be diſcharged of his office *ipſo facto* or not, *quære?* But the writ is not cloſe, but patent as a commiſſion, and is directed to the late ſheriff, reciting the words of the patent of the new ſheriff, with a command to the old ſheriff to deliver the cuſtody of the county, with all rolls, writs, and other memorandums, by indenture to the new ſheriff &c. And it ſeemed to MANWOOD and DYER that his authority ceaſes by ſuch public delivery of the writ of diſcharge in the county court, where every man of the county is bound by the law to take notice. And if any man be pronounced outlawed of felony at the county court, and one of the county knowing nothing of the felony receive him, he is acceſſary by 13. or 14. *E.* 2. [*H.* 12. *E.* 2. *Fitz Ab. Corone* 377.]

17. E. 4. ca. 6. 21. H. 6. 29. b. 3. Co. 72. B. N. C. 509. Stamf 41. E. [Cro Eliz. 12, 368. 2. Com. dig. 582. Sec 3. Geo. 1. c. 15. 20. Geo. 2. c. 37.]

Mich. 26, 27. *Eliz.* Arreſt on a *capias* by the ſheriff before he has notice of his diſcharge is legal, and falſe impriſonment does not lie. *St. John's* caſe [Mo. 186, 364.] by all the juſtices.

Eaſt. 44. *Eliz. C. B.* † *Fleming* v. *Cheverley.* *Pulmer*, ſheriff of *London*, had a writ of diſcharge delivered to him; his under ſheriff, not knowing of it, made an execution in the country, and adjudged no execution, and yet the ſheriff no treſpaſſer. And WALMSLEY there cited a judgment, that an execution by a bailiff after *ſuperſedeas* delivered to the ſheriff was void. [Imp. Off. of Sheriff, 131, 132. 1. Hen. Bl. 629.]

" *Mordant*, his father, died on the third day of " *April*, in the time of parliament. It was hol- " den by the opinion of all the Juſtices, the At- " torney and Solicitor-General, that the ſaid " office by this matter is not determined in him, " although he be now a Baron, but he ſtill con- " tinues ſheriff at the will of the Queen. This is introduced into CRO. EL. 12. and ſaid to be DYER's manuſcript.

Duke of Somerſet's Caſe.

(37) A DEED of gift, bargain, and ſale of lands in exchange, was made to King *Edw.* 6. by the late Duke of *Somerſet* in fee, and was acknowledged to be enrolled

A deed of bargain and ſale of lands to *E.* 6. was acknowledged before a Maſter in Chancery, and delivered to be enrolled, but only put

(37) Sir *Thomas Egerton*, Maſter of the Rolls, in Mr *Aldſworth's* reading in *Lincoln's Inn*, 38. *Eliz.* in *Lent*, ſaid, when he was Attorney he had occaſion to aſk the opinion of this WRAY and MANWOOD, Chief Juſtice and Chief Baron, who, then living denied that their opinions were ever as DYER hath here reported; and they ſaid, that there is no foundation that the King cannot take, but by matters of record; for he ſaid that the King is entitled in many things which are in fies on the rolls, and in the memorandums in the Exchequer; and yet theſe are ſufficient titles for the King. Note *F. Feoffments Faits* 18. *Supra* 195. pl 36.

Mich. 42, 43. *Eliz. B. R.* in *Abraham* and *Wilcock's* caſe [Yelv. 30.] GAWDY, By indenture delivered of record, and remaining in the Court of Augmentations, nothing paſſeth to the King clearly: to which the other juſtices ſeemed to accord.

About 35. *Eliz.* this ſame caſe came in queſtion again between the *Dean* and *Canons* of *Windſor*, [cited Mo. 676.] and one *Middlemore*; and by the reſolutions of all the Judges of *England*, it was

into a cheſt; holden that the lands do not paſs, nor will enrollment at this day veſt them in the Queen. [17. Vin. Ab. 172, 173. in notes.]

1. And. 229. Hutt. 1. Rol. Contin. 70. Dy. 276, 195. Mr. Taylor denied this caſe to be law in his reading, 1627. 1. H. 7. 29. 7. E. 4. 5. a. 1. Co. 14. 8. Eliz. 254. a. 21. H. 7. 21. 12. H. 7. Kiel. 12. 6. E. 6. 74 a [Com. dig. Patent (E) Prerogative (D. 66.)]

enrolled before one of the Maſters of the Chancery, and alſo before the Chancellor of the Augmentations, and delivered in the Court, and there put into a cheſt, but not enrolled to this day; whether it may legally be enrolled this term, and thereby the lands veſt in the Queen as heir or purchaſer. The queſtion was moved by GERRARDE, Attorney-General. And it ſeems by the opinion of WRAY, DYER, BELL, and MANWOOD, that it may not, to veſt any intereſt in the Queen according to 5. & 7. *E.* 4. [7. pl. 15. 16. pl. 11.] And *Brooke* in title *Done* [pl. 16.] 37. *H.* 6. [10. b.]

was agreed that the deed may be enrolled at this day; and ſo it was, and therefore *Middlemore* was ouſted of his term. And it was alſo debated in the Parliament-houſe, and there alſo agreed accordingly; and it was alſo reſolved by all the Juſtices, that the acknowledgment of the deed before the Maſter in Chancery, and the delivery of it in the Augmentation Court, do not make it a ſufficient record before inrollment to veſt the intereſt in the King; but when it is now enrolled with the other date, it veſts the intereſt in the King with relation, for all men are eſtopped to ſay that it is not enrolled according to the date; as appears in the caſe of *Lutford* and *Gretten*, Plowd. 491. b. [2. Rol rep. 119. Dougl. 57, 58.]

The contrary to this is holden at this day, for if it be on the files, or in any place among the memoranda of the Exchequer, it ſufficeth for the King.

A clauſe in the ſtatute of chanteries 1. *E.* 6. 14. near the end [§ 31.] that a gift before that made by any means by eccleſiaſtical or ſpiritual perſons ſhall be good; upon which it was adjudged, 7 *Eliz.* in the Exchequer that a gift by a prebendary, of land parcel of his prebend, to King *E.* 6 before the ſaid ſtatute, by deed which was not enrolled, was good. And the caſe was between *Wharton* and *Morley*. 25. *Eliz.* rot. 130. [1. Leon. 332. Cro. Eliz. 24.]

Eaſt. 30 *Eliz.* in the Exchequer, this caſe of DYER was denied to be law; and MANWOOD denied his opinion to be ſo; for after acknowledgment, the delivery of the deed to be enrolled in court, makes it a record.

Eaſter

* Eaſter Term,

19 Queen Elizabeth,

Onely *againſt* the Earl of Kent, and Mary his Wife.

North.
Trin. 18. *El.* rot. 934.

(38) ONELY brought an action upon the caſe againſt the Earl of *Kent*, and *Mary* his wife, late the wife of *Ed.* Earl of *Derby*, deceaſed, comprehending in the writ and count, That whereas the ſaid *Mary* in her widowhood had divers buſineſſes, ſuits, and quarrels depending, and that the plaintiff at her requeſt had employed great labour and pains, and alſo had expended about her ſaid buſineſſes, ſuits &c. the ſum of £.1500, in conſideration thereof ſhe undertook and promiſed to the plaintiff, that ſhe would bear, and pay to him all ſuch charges and expences as he had ſuſtained and expended, and £. 200 over and above, when ſhe ſhould be thereunto requeſted; and although he had expended and paid for her about her buſineſſes, ſuits &c. aforeſaid £. 1500, nevertheleſs, the ſaid defendant, the ſaid £.1500. or the aforeſaid £.200. over, although often requeſted, hath not as yet paid &c. to the damage of the plaintiff of £.1800 &c. The defendants ſay, *actio non*, becauſe, proteſting that the plaintiff hath not expended the aforeſaid ſum of £. 1500 *prout* &c. proteſting alſo that the aforeſaid *Mary* did not promiſe the aforeſaid £.200 beyond the ſaid charges and expences *prout* &c. for plea they ſay, that the aforeſaid plaintiff laid out and expended about the buſineſſes and ſuits aforeſaid £.10 and no more; and that upon an agreement between *H.* now Earl of *Derby*, and the ſaid *Mary* in her widowhood, that in part ſatisfaction of her dower of the inheritance of her late huſband, he would make to her or her aſſigns, two leaſes of two manors by name in the counties of *Middleſex* and *Northampton*, for divers years, to commence immediately after the death of *Mary*; rendering for one leaſe £.35, and for the other £.38 13*s.* 4*d.*; and that it was further agreed between the ſaid *Mary* and *Onely*,

In caſe againſt huſband and wife "that in conſideration plaintiff had uſed great pains, and expended great ſums about the affairs, ſuits, and quarrels of the wife during her widowhood, ſhe undertook to repay him, and to give him 200l. more—Plea, that the heirs of her firſt huſband in recompenſe of dower, made two leaſes to commence after her death to the plaintiff, who promiſed to aſſign them for her uſe whenever ſhe required; but that it was agreed between the huſband defendant, and plaintiff, that he ſhould retain them to himſelf in ſatisfaction, which he accepted: holden, That the conſideration for the aſſumpſit is maintenance and bad; but the ſatisfaction by the accord would be bad alſo, for 1ſt, The leaſes were his own, ſo no advantage; and 2dly, They were executory, ſince not to take effect till after her death.

[Bendl. 297. S. C.]

Fulb. Parl. lib. 2. fo. 19. Hob 106. 2. Bulſ. 230. 1. Leon. 19, 179. Mo. 866. 2. Ro. Rep. 77. Pal. 190. 11. El. 272. a. 10. Co. 102. a. 2. Bulſ. 127, 330. 4. Co. 1.

Oneley, that the ſaid leaſes ſhould be made by the ſaid preſent Earl of *D.* to *Oneley*; and he upon requeſt promiſed *Mary* to aſſure and aſſign them over to her, or to ſuch other as ſhe ſhould name, and to her uſe or benefit; which leaſes were made accordingly. And that after marriage the Earl of *K.* at the requeſt of *Oneley*, agreed that *Oneley*, in ſatisfaction of the ſaid undertaking, expences, and troubles, ſhould * retain and have the ſaid leaſes to his own uſe and advantage, without making any aſſurance or aſſignment as above; which agreement he accepted *s.* at *F.* in the county of *Bedford*, and this &c. Whereupon the plaintiff demurred in law.

9. Co. 79. 1. Cro. 160, 358. Yelv. 197.

(39) MOUNSON and MANWOOD argued againſt the plaintiff, *s.* that the conſideration above was inſufficient, and againſt law; for it was maintenance in the plaintiff. Alſo MANWOOD thought the writ and count very uncertain, for not ſhewing what buſineſſes, ſuits, and quarrels, and between what perſons &c. or at leaſt naming ſome or other &c. And in the proviſo they differed: MOUNSON ſaid that it was idle and nugatory, and did not hurt the plea; but the other *e contra*, *s.* that it was repugnant &c. And MOUNSON thought that the matter of the plea for the agreement was good and ſufficient &c. but MANWOOD and DYER *e contra*; for every wrong and injury begets diſcord and variance, which by accord and concord between the parties are ſatisfiable and recompenſable; but the thing which ſhall be for amends ought to be ſome charge to the one party, and commodious and profitable to the other, (*elſe as good never a whit as never the better.*) Alſo the amends ought not to be made of a thing which is his own; as redelivery or reſtitution of his own evidences. *T.* 9. *E.* 4. [19. a. pl. 21.] Alſo the amends ought to be made in the life of the offender, and not by his executors or heir, becauſe *actio perſonalis* &c. Alſo if it be in two things, both ought to be executed. 6. *H.* 7. [10. pl. 8.] Alſo it is not executory at a future day, but ought to be executed before the action brought. And alſo at the day appointed the party may refuſe to accept the amends agreed upon by 17. E. 4. [2. pl. 5. & 8. a. pl. 6.] &c. but in caſes of arbitrament the law varies; for arbitrators are judges indifferent elected by the parties, therefore if they judge the treſpaſſes equal, and that each party

[Carter 230. Hawk. Pl. Cr. b. 1. ch. 38.]

3. Cro. 133. 10. Co. 102. Plow. 123, 129.

9. Co. 74. b. 79. b. 1. Ro. Abr. 129. 16 E. 4. 11. Plow. 5. a. Roll. contin. 96. 3. Cro. 356. Dr. & St. 105. a. 5. Co. 11. b. 2. H. 5. 2. 16. E. 4. 8. b. 17. E. 4. 2. 6. Co. 44. Dy. 75. Plow. 11. 5. E. 4. 7. 8. Co. 98.

[Vin. Ab. tit. Accord (A) per tot Cro. El. 304. 1. Mod. 69. 1. Ld. Raym. 122. 2. Term Rep. 25, 26. 1. Com. dig. 97, 99. 5. Term Rep. 142]

Cro. 121. pl. 70. R. 478. 22. H. 6. 39.

ſhall be diſcharged or quit againſt the other, it is good enough. *M.* 16. *E.* 4. [9. a. pl. 5.] & 5. *H.* 7. [22. pl. 2.] And alſo if the one ſhall pay a recompenſe in money, or other thing, an action lies for it, but in the concord it is not ſo; and yet in award there ought to be ſomething done by each party to the other, commodious in appearance, 12. *H.* 7. [14. b. pl. 2.] (40) And in the principal caſe above the two leaſes, which are the amends for the trouble and undertaking, are the proper chattels of the plaintiff himſelf, and no uſe of them, or property in the defendant *Mary*; but a naked promiſe and confidence to have them, for which is no remedy in law, but a *ſubpœna* lies: See thereof † 50. *E.* 3. 6 alſo the leaſes do not commence before the death of the lady, ſo no profit can in the mean time accrue to the plaintiff, Wherefore &c.

[Kyd on Awards 128, 129. 5. Term Rep 142, 143.]

43. E. 3. 28. 29, 33. 19. H. 6. 37. 13. H. 4. 15. 14. H. 4. 24.

[1. Wood. Convey. 681.]

5. Co. 6.

And by DYER the acceptance of the recompenſe is not material to make a good * concord, as to accept one manor for another, or one quantity or value for another, upon a condition performed in debt on bond 3. *H.* 7. [4. pl. 14.] & 12. *H.* 7. [15. a. pl. 2.] to accept his own goods by award is not good. But in exchanges, although the values or the quantities differ, it is not material, ſo as the eſtates in the exchange are equal, otherwiſe no acceptance can make it perfect in law. So in the caſe above, Wherefore &c.

* [356. b.]

10. H. 7. 15. 9. E. 4. 21. pl. 55, 275. Lit. 13. 64, 65.

[2. Black. Com. 323. 3. Com. dig. 287.]

And DYER thought the conſideration above good, and legal, and charitable, *ſ.* to aid and eaſe a *feme ſole* in her widowhood in her affairs, and ſuits, and quarrels, which may well be without ſuits at law divers ways; and the word *depending* is not of neceſſity to be intended between parties litigating in an action pending in any court of law &c. and then it cannot be maintenance; therefore he concluded his argument with the plaintiff, and the plea in bar inſufficient.

4. Car. Cro. 160. Hob. 68.

Dy. 75, 113, 230, 272, 328, 352.

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(41) AN action of covenant was brought by *A. B. aſſignee of C. D.* who was the party named in the indenture; upon which he recovered, by error as is ſuppoſed. And the defendant brought a writ of error, and the writ was, between *A. B.* plaintiff, and *F. G.* defendant,

In the writ and count in covenant, the plaintiff was called *A. B. aſſignee of C.* In error afterwards he was called *A B only*; it is his whole name, and the want of that addition immaterial.

Br. Covenant 32. F. Nat. 145. c. d. B. N. C. 74. 1. Ro. Rep. 15, 16.

ant, omitting the words *aſſignee of C. D.* which were in the writ and count of covenant: and exception thereto was taken by *Barham*, *ſ.* that the record cannot be removed by the writ of error, for there is no ſuch record;

3. E. 4. 26. Dy. 105. b. 206. b. 348.

and MANWOOD agreed to this opinion, becauſe the word *aſſignee* is the ſubſtance of the action of covenant to the plaintiff, and the writ of error is founded upon that record, and ought to agree therewith. But MOUNSON and DYER, *e contra*. And that *A. B.* which is the whole name and ſirname of the party plaintiff, is ſufficiently mentioned in the writ of error (*a*) without the addition above to have the record removed to be examined for the error; to which WRAY and BELL afterwards agreed. See *E.* 9. *H.* 6. 2. & 5.

[2. Bac. Ab. 201. 5. Com. dig. 298.]

[3. H. 6. 16.]

(*a*) And now by 5. *Geo.* 1. c. 13. § 1. All writs of error wherein there ſhall be any variance from the original record, or other defect may and ſhall be amended, and made agreeable to ſuch record by the reſpective courts where ſuch writs ſhall be made returnable. See the caſes of amended writs of error, in 1. Com. dig. 345. Comp. 426. and 2. Crompt. Pract. 399—405.

If a parſon make a leaſe which the Biſhop confirms as patron and ordinary, but not the chapter, and afterwards the Biſhop collate another, and then is tranſlated; this leaſe cannot be avoided during the lives of the Biſhop, and of the incumbent who found the land charged.

(42) THE parſon of a church, of which the Biſhop of *L.* is patron and ordinary, made a leaſe of his parſonage for forty years. The Biſhop only, confirms the leaſe by his writing and his own ſeal, without the confirmation and ſeal of the Dean and Chapter. Afterwards the parſon leſſor dies, and the ſaid Biſhop gives the benefice by collation to another, who being incumbent, without any entry made upon the leſſee, makes a * leaſe to another; which ſecond leaſe is confirmed alſo by the Biſhop, who confirmed the firſt leaſe, as well as by the Dean and Chapter. And now this Biſhop is tranſlated to *York*; *quære* which of theſe leaſes ſhall ſtand in force after the tranſlation, during the life of the Biſhop. And by the opinion of the Chief Juſtices, Juſtice MANWOOD, and GERRARDE the Attorney-General, the firſt leaſe ſhall ſtand in force during the lives of the Biſhop, and the ſucceſſor incumbent who found the church charged as above. And this reſolution was certified to the Queen's council in *Hilary* Term next, by letters &c.

* [357. a.]

Co. Lit. 300. b. Br. Confirmation 21. B.N. C. 202. Inſt. 30. b. 1. Ro. Abr. 481. Plow. 137. 1. Leon. 235. 3. Bul. 290.

10. Co. 62. a. Dy. 36, 58, 61. b.

[Wats. Cler. Law 478, 479. 3. Bac. Ab. 376, 377.]

Marquis

Marquis of Northampton's Caſe.

(43) THE huſband and the wife by their deed indented, dated in *December*, in the thirty-ſecond year of *Hen.* 8. made a leaſe of certain parcels of the inheritance of the wife, for the term of twenty-one years, rendering to them and to the heirs of the wife the accuſtomed rent. And afterwards *s.* in 35. *H.* 8. it was enacted by parliament, that the huſband ſhould have and enjoy the lands in leaſe and the rent, to himſelf only for the term of his life, remainder to his wife; and that all leaſes and grants thereof made, and to be made by the huſband by indenture for the term of three lives, or one life, or for the term of twenty-one years or leſs, reſerving the accuſtomed rent to him for the term of his life, and after his deceaſe to his wife and to her heirs, ſhall be good and effectual during ſuch term or terms. The huſband after eight years of the ſaid leaſe expired, (reciting the former leaſe) demiſed, and granted the ſaid land for twenty-one years next after the end of the firſt twenty-one years, reſerving the ſaid uſual rent by indenture according thereto. Whether this leaſe be good or not after the death of the wife and huſband, *quære.* The argument depends upon the meaning of the makers of the act, whether he can make any leaſe or leaſes in reverſion or not; for no reſtraint of the leaſe in reverſion is in the act, as is written in the act of 32. *H.* 8. c. 28. Therefore it ſeemed to MANWOOD and DYER, that the leaſe above is good, and warranted by the act. But MOUNSON, *e contra.* †

If huſband and wife leaſe purſuant to 32. *H.* 8. c. 28 and then by act of parliament the land is ſettled to the huſband for life, with power to make leaſes for three lives, or 21 years; he may make leaſes in reverſion during the firſt leaſe.

2. Ro. Ab. 261. } S.C.
3. Leon. 71. }
4. Leon. 17. }
Roll. contin. 402.
4. Leon. 57.
3. Leon. 132.

1. Keb. 912.

8. Co. 70. b. 1. Mar. 96. b. Co. 6. 33. a. Raſt. Leaſes 2. [Powel on Powers 416, 417. Com dig. Poiar (B. 1.) and of Leaſes under Powers, ſee Vin. Ab. Power A. 3. Bac. Ab. 416 &c. Cowp. 714. Doug. 292, 565.]

† And that ſeems the better opinion.

Chycke's Caſe.

Mich. 18. 19. El. rot. 306. Ford.

(44) *WILLIAM CHYCKE* ſeiſed in fee of a meſſuage in *London*, by his will in writing deviſed it by theſe words, *s. Item, I give the fee-ſimple of my bigger houſe in*

Deviſe of "the fee-ſimple of my eſtate "to *B* and after her "deceaſe to *C.* her ſon,"

(44) A ſeiſed of *B. Acre*, and of a meſſuage, deviſed all his lands and tenements to *C.* in fee, and afterwards in the ſame will he deviſed *his meſſuage called the Swan, now in the tenure of J. S.*

(who was her heir,) gives but a preſent eſtate for life to *B.* remainder to *C.* for life, with remainder to *B.* in fee. (a)
[Bendl 300. S. C.]
1. And. 51. S. C.
1. Leon. 180. F. Nat. 46. b. 6. Co. 16. b. Plow. 523, 540. Dy. 122. Vide 33. Eliz. 33. & 60. ca. inter Atkins and Atkins [Cro. Eliz. 248]
13. H. 7. 17. b. 19 H. 8. 8. b. 11 Car. Cro. 449. 1. Bulſt. 195. Rol contin. 424. 5. Mo. 362. 40. E. 3. 15. pl. 467. 3. Keb. 24. Finch. fo. 46. [Lat. 44. 2. Black. Com. 127.]

in Soper-lane, to my couſin Alice Ludlam, and after her deceaſe to William L. her ſon, (which *William* was her heir * apparent) and died. *Alice* entered and took huſband, and had iſſue by him, and died. Whether the huſband ſhall be tenant by the curteſy, was the ſpecial verdict *in ejectione firmæ:* and the opinion of the Court was, that the wife ſhall have the eſtate only for term of life, remainder to *W.* her ſon for the term of his life, and the fee ſimple to the wife; ſo the huſband ſhall not be tenant by the curteſy; and ſo (*a*) adjudged.

J. S. to D. for ever. Among other things, it was reſolved that *D.* hath a fee in the houſe. *Eſt. 4 Car. B. R.* by the Juſtices, and the caſe was of *Chamberlain* and *Katharine* his wife againſt *Turner.* Cro [Car.] fol. 129. a *Whitting*'s caſe, 11. Jac. *B. R* 1 Bulſt. 219.] deviſe *to A. for ever,* is a fee: but if it be limited after the death to *B.* in fee, there *A.* has but a life-eſtate. [That the word *heirs* is not neceſſary in a deviſe to create a fee, ſee Cowp. 306, 352, 659. Dougl 321. 1 Term Rep. 411 1 Br. Ch. Caſ. 147. 3 Term Rep. 143, 356. 2 Term Rep, 656. 1 Hen. Bl. 1.]

(*a*) But Bendloe and Anderſon both report this caſe as adjudged, that *C.* the ſon ſhall have the fee, after the life eſtate of the mother determined.

Symons *againſt* Spinoſa.

An alien muſt pray a trial *per medietatem linguæ*, before any *venire* is awarded, or he is too late.
[Vin. Ab. Trial. (N. b. 9.)]
Vide ante. fo. 28. 144.
2. Ro. Ab 643.
3. Cro. 869. 14. Eliz. 304. 2. Stamf. 59. 159.
1. Keble 853
[2. Hawk. P. C. 591.
2. H H. P. C. 272.
1. Black. Rep. 517.]

(45) IN debt on bond indorſed with condition of payment &c. by *Simons* againſt *Francis Spinoſa*, of *London, Yeoman*, otherwiſe called *F. S.* of the city of *London*, leather-ſeller, iſſue was joined upon a tender of the leſs ſum, and a general *venire facias* was awarded of twelve good and lawful men. And at *niſi prius*, the defendant challenged the array, becauſe he was an alien &c. and prayed trial *per medietatem linguæ*; and the plaintiff could not deny it, but prayed the inqueſt to be taken at his peril, which was taken all of denizens; and found for the plaintiff And at the day *in banc*, the defendant alleged this matter in arreſt of judgment, *ſed non allocatur*, becauſe it was his laches that he had not informed the court of it before the awarding of the general *venire facias*, according to the precedents, notwithſtanding the caſe of 21. *H.* 7. [32. b. pl. 23.] thereof. See a good caſe of this

this *M.* 3. *E.* 4. fol. 12. in an obſcure note. And in the caſe above, it did not appear to the Court that he was alien, as in *M.* 22. *E.* 3. fol. 14. & 20. for it appears that they were merchants of *Germany*, who have the King's charter of privilege of trial *per medietatem linguæ*.

Salforde's Caſe.

STAFF.

(46) *SALFORDE*, attorney of *C. B.* was ſued by bill in nature of a writ *ejectione firmæ*; and the plaintiff counted upon a leaſe for term of ten years, to commence from the day of the death of the leſſor; and ſhewed in certain the day of the making of the leaſe, and the day of the death of the leſſor. The defendant imparled until another Term; at which day, without making a new defence, he ſaid to the force and arms, *not guilty*; and to the reſt, *billa non* &c. (*quære* if it ſhould not be *actio non* &c.) and ſhewed for bar that the land was deviſable by reaſon of ſocage tenure, and a deviſe to the ſaid leſſee by the leſſor, by his laſt will in writing of the term, as above, without concluding *which is the ſame demiſe, whereof* &c. and further ſhewed, that by the cuſtom of the town, where &c. all deviſes and leaſes granted for more than ſix years are merely void, *ipſo facto*; and conveyed the land by deſcent from the * leſſor to him, and ſo juſtified &c. and thereupon the plaintiff demurred in law. And in this Term it was ruled, that the bar is bad, becauſe it doth not anſwer the leaſe ſhewn in the bill, but argumentatively: and alſo this cuſtom is void, becauſe againſt common reaſon, and the freedom of the eſtate of one who hath fee-ſimple.

A cuſtom, that a tenant in fee may only leaſe for ſix years, is bad. [Jenk. 83. c. 62. ad. fin.]

Sty. 423. Jenk. c. 4. ca. 18.

Dy. 324. pl. 32. 361. pl 10. 1. H. 7. 7. 27. H. 8. 2. 29. H. 8. 36.

6. Co. 41. a. 5. Co. 84.

* [358. a.]

Lit. pl. 360. Dy. 167. b. 171. 1 Ro. Ab. 558. R. 5. [4. Bac. Ab. 97.] [2. Term Rep. 746. 3. Term Rep. 271. 4. Term Rep. 603, 604. 2. Black. Rep. 698.]

Woodley *againſt* James and Others.

(47) UPON a demurrer in law the queſtion is, Whether a leaſe for life, term of years, or at will, made at this day, or at any time ſince the Feaſt of *St. Michael*, in the 22d year of *Hen.* 8. by the King, or any perſon, to a ſpiritual perſon, ſecular, or regular, of any farm, lands, or tenements, whereof he takes uſe, occupation, or intermeddling, by reaſon or colour of that demiſe, be void, or

A leaſe to a ſpiritual perſon, contrary to 21. H. 8. c. 13. is not void.

1. Mar. 96. b.

27. H. 8. 21. a. Raſt. reſidence 2. Dy. 28.

[3. Bac. Ab. 335. 3. Leon. 122.]

or of none effect in law, or not. And for this, ſee the ſtatute of 21. *H.* 8. c. 13. the firſt part, and the proviſo for hoſpitality; which queſtion was adjudged and ruled that the leaſe is not void in *B. R.* in the 12th year of the preſent Queen, between *Woodley* and *James*, and others.

Eaſt. 17. El. rot. 30. Fyrd.

Lancaſtel *againſt* Aller.

The reverſioner enfeoffs the tenant for life; it enures as a ſurrender of the life-eſtate, and makes a good feoffment. [Bendl. 288.] } S. C. 1. And. 51. } 40. E. 3. 24. a. 21. E. 4. 22. b. 34 Aſſ. 3. 39. Aſſ. 12. 6. Co. 26. a. 9. 131. b. Perk. 56, 127. 1. Co. 76. 6. 15. a. 5. 15. 37. H. 6. 18. 14. H. 7. 4. Plow. 87. 13. H. 7. 15. a. Plow. 520. 2. Rol. Ab. 495. So it was holden for the principal point in Leonard's caſe, the Prothonotary, Mich. 28. El. *per Cur.* [Ow 1. 3. Leon. 128. Gouldſ 25. Godb. 139.]

[5. Chm. dig. 513. 2. Bac. Ab. 591.]

(48) THE father enfeoffed the ſon to the uſe of the father himſelf for term of his life, and after his deceaſe then to the uſe of the ſon and his heirs: and afterwards the father and ſon (upon communication that the father ſhould have back the land in fee) came together to the land, and there upon the land, by parol without any deed, the ſon delivered ſeiſin of the land to the father, *habendum* to him and his heirs &c. Whether this be a good feoffment, or not, *quære*;—found by ſpecial verdict in *ejectione firmæ*. And by the opinion of the Court it is a good feoffment: and that in law this acceptance of livery implies two effects; 1. firſt, a ſurrender, and afterwards a feoffment, as ſurrender to the grantee of a reverſion amounts to an attornment and ſurrender.

(48) So a feoffment made before the ſtatute of *quia emptores terrarum*, to hold *of* the grantee of the ſeigniory is good; otherwiſe *to* the grantee of the ſeignory, and alſo to make a tenure.

19 Queen Elizabeth.

(49) A *Feme covert* had a jointure made to her by her husband after the coverture; and afterwards the husband and wife by fine, *sur cognizance de droit* &c. aliened the jointure. Whether that shall be good after the coverture to the wife for her dower of the residue of the land of her husband, or not, *quære*. And the opinion of WRAY, BELL, MANWOOD, and DYER, was, that it is not; because her time of election is not come until she is become sole, according to the statute of 27. *H.* 8. c. 10. See well the statute. But if the fine be *sur cognizance de droit*, as that which the conusee hath of the gift of the husband only, it is the best form for the wife, and less doubtful.

The husband after marriage, assured to his wife a jointure: if they levy a fine of this land, her dower is not barred. Co. Lit. 36. b. 3. Co. 32. a. 1. Leon. 285. 6. H. 4. 8. b. Co. Lit. 380. b Rast. Uses 9. [2. Bac. Ab 140. Cruise on Fines 184, 185.]

(49) So holden by ANDERSON and his companions in *C. B.* for this very reason *Mich.* 24. & 25. *Eliz.*

20. *E.* 3. *cui in vitâ* 10. The wife shall not be examined, because all shall be adjudged the deed of the husband, as if the wife had not been named.

Welcden *against* Elkington.

(50) A TERMOR for sixty years, by his last will and testament devised in this form, *s.* "*I will that* "*Joan my wife shall have and occupy all the land contained in* "*the lease for so many years as she shall fortune to live; and after* "*her decease I give and bequeath the residue of the years of the* "*said lease, then not expired, to F. my son, and to his assigns;*" and made his wife sole executrix, and died; having goods sufficient, besides the said lease, to satisfy all his debts. The wife proved the will, and made her entry into the lands, claiming only her estate and legacy in the term for her life, and the remainder to *F.* according to the will. Afterwards she took a husband, and they (naming the wife executrix &c.) aliened and granted all their interest, title, and term of years to come and unexpired in

A termor devises the occupation of his land to his wife for as many of the years as she shall live; and after her death the remainder of the years unexpired to his son: and makes her sole executrix, and dies. The widow enters, and agrees to the legacy, there being assets besides, sufficient to pay his debts. She cannot afterwards dispose of the term absolutely against the son as executrix, nor as devisee since she can only have the whole upon a contingency, namely, if she should live so long.

See Plowd. 519. S. C. and the books there cited.
[Bendl 308 S. C.]
Plow. 516, 520, 524.
Perk. 519. 10. Co. 47.

in the lands, and all their eſtate therein, *habendum* the lands and term until the full end of the ſaid ſixty years. Whether that alienation ought to bind and bar the remainder after the death of the wife or not, the Jurors doubted, therefore &c. See for this caſe *Hilary* 10. of the preſent Queen, [*ante* 272. a. pl. 30.] a term *habendum* to the grantee after the death of the grantor; alſo ſee *M.* 6. *E.* [*ante* 74. pl. 18.] & *T.* 10. of the now Queen, [*ante* 277. b. pl. 59.] & *M.* 15. [*ante* 328. b. pl. 11.] And in the Term of *Eaſter* next the caſe was argued at the Bench; and MEADE, Juſtice, (made in the laſt Term) who was of counſel with the defendant at the bar, having changed his opinion, argued againſt his client, and for the plaintiff; and MOUNSON alſo at the firſt day; and that the alienation of the huſband and wife ſhould not prejudice the remainder &c.

28. H. 8. 7. a.
Dy. 140. 253. b.

Mo. 759.
Went. 343, 324.

(51) And on the morrow, MANWOOD and DYER argued to the ſame intent; for the entire and mere right of the term is not deviſed or diſpoſed of to the wife for any time, but there is a ſeparation of the right of poſſeſſion from the right of property. And yet the wife had intereſt by poſſibility in the whole term, if ſhe ſurvive the ſixty years; and therefore ſhe may aptly be called a termor *s.* for a term of years, in a writ of waſte. And in the count, "*if ſhe ſo long live*," ought to be added; and yet ſhe had no ſuch power after that ſhe once and on her firſt entry into the land by virtue of the * will, had expreſsly declared, by her claiming, that ſhe agreed to take it as a legacy, with the remainder to the ſon, according to the will, waiving the title and intereſt of an executrix in the term. And if the teſtator had deviſed and bequeathed firſt his entire term to *F.* his ſon, † *ſo that* the wife have the occupation and uſe of the land during her life, that would have been good, and the wife could not aliene the entire term. And note the words of the will, *s.* "*I will that Joan my wife ſhall have &c. and after* "*her deceaſe I give and bequeath the reſidue of the years &c. to* "*F. my ſon*," &c. which proves fully his purpoſe and intent, that the wife ſhall be reſtrained from power to aliene the entire term.

* [359. a.]

Dy. 328. Plow. 539, 540, 543. a.
B. N. C. 334. 388.
Br. Done 57. 33. H. 8.
F. Done 2. Dy. 7. pl. 8.

† Orig. *ita quod on que.*

(52) Alſo

(52) Alſo ſee the roll of the caſe of *T.* 37. *H.* 6. [30. pl. 11.] which is entered *T.* 37. *H.* 6. *Rot.* 291. where an iſſue was joined upon the gift of the executor, to whom the deviſe of the book, which was called an *Ordinal*, was made; and the caſe was, as it ſeems by the pleading, that a man poſſeſſed of a book, by his will deviſed the cuſtody and occupation of it to one *A.* for his whole life, remainder to one *B.* in like manner, and to diſpoſe of it at his diſcretion to any church which wanted ſuch a book; and made the deviſee and another his executors, and died: the deviſee got poſſeſſion of the book, and gave it to the guardians of the church of *Walberton*, in *Suſſex*, and delivered it with the conſent and aſſent of the other executor; and afterwards *A.* died, and *B.* by the command of the other executor, reſeized the book, and juſtified the detainer &c. But the iſſue is joined upon the gift of *A.* the firſt executor, and the iſſue continued without trial. This precedent ſeems *primâ facie* againſt the opinion aforeſaid: but then, note the authority of an executor, when he does not diſclaim to take as deviſee, but takes it as executor; and alſo where it does not appear plainly that the goods and chattels of the teſtator ſuffice for the payment of the debts and funeral expences of the teſtator &c. Plow. 522. a.

(52) The difference between this caſe and the caſe of 10 *Eliz.* 277. b. pl. 59. is, that there the wife being made executrix entered generally, without declaring that ſhe wou'd take the eſtate as a legacy, as is in the caſe here; for there ſhe took the eſtate as executrix.

* Michaelmas Term,

19 & 20 Queen Elizabeth.

Adjourned on account of the Plague in *London* and *Weſtminſter* at firſt, until a month from *Michaelmas*, and from thence to the Morrow of *St. Martin.*

The tenant of a manor in ſocage, obtaining a releaſe of his lord, who holds over *in capite*, ſhall himſelf now hold *in capite*.
Davis 67. a. a. 2 Ro. Ab. 512. B. 30. H. 8. 45. a. 7. E. 4. 12. a. 38. Aſſ. 17. Dy 35, 44, 46. Stamf. 30. 2. E. 4. 6. a. Co. Lit. pl. 141.
[12. Car. 2. c. 24. aboliſhed this tenure, but ſee 4. Term Rep. 443.]

(1) THE King Lord, Meſne, and Tenant. The meſnalty is a manor, and holden of the King *in capite*; a tenant paravail who held of the manor by ſocage tenure, obtained a releaſe from the meſne; now his tenure ſhall be immediately of the King *in capite*, as the tenure of the manor, by WRAY, DYER, and MANWOOD, Juſtices, and CORDELL, Maſter of the Rolls, becauſe *volenti non fit injuria.*

If a full jury do not appear, and the plaintiff pray a *diſtringas*, without praying any *tales*; the Court ought to grant it at the prayer of the defendant.
2. Ro. Ab. 671. Dy. 193, 318.
[2. Hawk. Pl. C. 575. Bac. Ab. Juries (C.)]

(2) THE jury was demanded in the Bench upon the *pluries diſtringas juratores*, and iſſues of five marks returned, and three only appeared; and the plaintiff prayed a *diſtringas*, returnable *XV. Hilarii*, without praying any *tales*; but the defendant would have a *tales* at his requeſt. *Quære*, Whether the Court ought to grant it. And by LEONARD, Chief Clerk, it ſeems that he may; and ſo it was ruled in *B. R.* as it is ſaid.

Bruerton's Caſe.

A tenant in chivalry *in capite* dies. *B.* his eldeſt ſon in ward dies without iſſue, and upon *devenerunt C.* is found *bre-*

(3) IT was found before the Eſcheator there, in the 13th year of *H.* 7. upon a *diem clauſit extremum*, that *James Manley*, who held of Prince *Arthur*, as Earl of

(3) *Hil.* 18. *Eliz. Cur' Ward'* [ante 344. b. pl. 3. Davis 160, 161.] Office found that *Owen ap David* died ſeiſed of divers lands holden of the Queen as of her principality *in capite*, by ſervice of going to war with the ſaid Princeſs, at the charges of the ſaid Princeſs; and it was adjudged by the Court that this was only meſne tenure, fol. 25. *Cur.' Warder'.*

Cheſter,

Cheſter, in capite by knight-ſervice, died ſeiſed in fee, and that *William Manley* was ſon and heir of the ſaid *James*, and within age &c. whereby the Prince had the wardſhip &c. and the ſame *W.* during his minority, died without iſſue: wherefore a writ of *devenerunt* iſſued there directed to the eſcheator, upon which it was found that *James M.* was *brother and heir* of the ſaid *W.* and within age &c. which very *J. M.* at his full age, thus by writ ſued out *probatam liberationem* there of the Prince, by writ directed to the eſcheator there in theſe words, *ſ.* "*Arthur* "&c. greeting: becauſe *James Manley, ſon and heir of* "*James Manley, Eſq.* who held of us *in capite* by knight- "ſervice, hath ſufficiently proved his age before you "&c. and hath made fine for his homage reſpecting &c. "we command you, having taken the fealty of the ſaid "*James* the ſon &c. that without delay ye deliver to the "aforeſaid *James* the ſon all the lands and tenements "which were of the aforeſaid *James* the father, (having "retained for the dower of *Eliena*, who was the wife "of the ſaid *James* the father,) and make him have full "ſeiſin thereof, ſaving always in all things our right, and "the right of every other perſon, witneſs &c." And ſo it appears that *James* the ſon is not made, nor called *brother and heir of W.* according to the inquiſition upon the *devenerunt*, nor according to the *Regiſter*, fol. 296. but only *ſon and heir of James the father*, and therefore the livery ſued as above is inſufficient, and no poſſeſſion diveſted thereby out of the hands of the Prince; but the poſſeſſion continued always in the Prince, and by reaſon of the ſaving of the right &c. and * then no intruſion &c. And then it is out of the ſtatute which pardons intruſions of the 21ſt of *Henry* 8. [c. 1.] or the fifth of the preſent Queen [c. 31.] or any other &c. And this was alleged of the part of the *Queen* againſt *Bruerton*.

ther and heir of B. within age. At full age *C* ſues livery, and has a writ to the eſcheator naming him only *ſon and heir of A.* yet it is a good livery.

Tenure *in capite* of the Biſhop of *Durham*. Dy. 277. 35. Davis 63. 2. Ro. Ab. 503. [Davis 171.]

Stamf. 12.

* [360. a.]

Dy. 249. pl. 83.

(4) But, on the other hand, it was alleged by *Bruerton*, that the eſcheator had ſufficient warrant by the ſaid writ to make livery to *James* the ſon, who did fealty, and compounded for his homage &c. although he was not named *brother and heir to William*, as he was in fact, and ſo found upon the *devenerunt*. But it is true alſo, that he was *ſon and heir to James the father*, when *W.* his elder brother was dead without iſſue. And alſo the words of

the writ of *devenerunt*, in the printed *Regiſter*, folio 292. " becauſe *A.* the ſon and heir of *B.* deceaſed, who held " of us in chief, is lately dead, while within age and in " our ward, as we have learnt, we command you, that " by the oaths &c. you inquire what lands and tene- " ments by the death of the aforeſaid *B.* the father, and " by reaſon of the minority of the heir of the aforeſaid " *B.* have come to our hands, and ſo are in our hands, " and how much thereof is holden of us in chief &c. " and who is the next heir of the aforeſaid *A.*" &c. And ſpeaks only of " all the lands and tenements which were " of the father, and which by the minority of the heir " of the father," came into the King's hands generally; and for thoſe lands the warrant above to the eſcheator is ſufficient, although he be not made, or called *heir* in the writ; and perchance there is no other form of livery in *Cheſter* in ſuch caſe.

(5) And liveries, although they are not perfect in form in all points, yet for that the King is bound in juſtice to make livery to his ward at his full age, if he ſue for it to the King, are favoured in law; becauſe the King doth not give him any thing of himſelf, nor of his own, but only renders and reſtores to the heir what belongs to him; and therefore if advowſons are not mentioned in the livery, if they are appendant, they paſs from the King: it is not ſo in his grant &c. Alſo the heir ought to be content with ſuch form and manner as pleaſes the Prince to uſe in name and addition in the naming of his ward; and here the Prince is not deceived in the livery; but did to *James* the ſon what he was bound in law and juſtice to do, Wherefore &c. And admitting the livery void, or voidable, then the entry of the heir was an intruſion; and all intruſions are fully pardoned by the 21. *H.* 8. [c. 1.] without any condition or exception, which were committed before 21. *H.* 8. And alſo by the death of Prince *Arthur* without * iſſue, all intruſions are diſcharged &c. and at length the rule of the Court was againſt the Lady the Queen &c.

1. H. 7. 28. 7. H. 8. Cro. 176. 5. E 3. 67. 9. E. 3. 26. Stamf. 43. 27. Aſſ. 48. F.N. B. 33. N. O. 41. E. 3. 5. b. 10. Co. 64. b. Stamf. 143. Plow. 252. Co. Lit. 77.

[Ante 44. b. p. 32. 2. Bac. Ab. 669.]

* [360. b.]

Dy. 249.

[12. Car. 2. c. 24. aboliſhed theſe tenures, and all their conſequences.]

(6) *GERRARDE*,

(6) GERRARDE, Chancellor of *Ireland*, moved this queſtion to the Queen's Counſel, *s.* Whether an Earl of Lord of *Ireland*, who commits treaſon in *Ireland* by open rebellion, ſhall be arraigned and put to his trial in *England* for the offence, by the ſtatute of 26. *H.* 8. c. 13. 32. *H.* 8. c. 4. 35. *H.* 8. 2. or 5. *Ed.* 6. 11. And it was holden by WRAY, DYER, and GERRARDE Attorney-General, that he cannot; for he cannot have his trial here by his peers, nor by any jury of twelve, becauſe he is not a ſubject of *England*, but of *Ireland*; and therefore his trial ſhall be there. And it is ſaid, that the uſage there of attainting a peer is by parliament, and not by peers.

Treaſon committed in *Ireland*, by an *Iriſh* peer, cannot be tried in *England*. Co. Lit. 261. b. Dy. 224 7. Co. 23. 9. Co. 6. 1. H 7. 3. a. 3. Mar. 131. b. 2 E. 3. 12. a. Raſt. Treaſon 12. Tryal 14. Raſt Treaſon 19. Crompt Jur. de Courts, fo. 23. Pulton 197. 7. Co. 15. a 23. a. 9. Co. 117. b. Stamf. 261. b. St. John's arg. 31. [1. And. 262 & See 1. St. Tr. 950. 8. St. tr. 354. 1. Hale Pl. Cr. 155. 284. 2. Hawk. Pl Cr. 318. & Co. Lit. 261. b, that this caſe is not law.]

(6) Sir *Thomas Wentworth*, Earl of *Strafford*, and Lord Lieutenant of *Ireland*, for treaſons committed by him in *Ireland* during his regency there, was attainted in Parliament here in *England* in the year 1641; and he pleaded to the juriſdiction of Parliaments in *England*, becauſe the fact was committed in *Ireland*; but it was reſolved and proved, that the conſtant practice of all ages was, that the Parliament of *England* has power of judicature for things done in *Ireland*; and that the Lord *Strafford*, being a Peer of *England*, cannot be tried by the Peers of *Ireland*: and afterwards he had judgment of death, and was beheaded at *Tower-Hill*, *May* 12, 1641. See *St John's* argument on the bill of attainder of the ſaid Earl, fol. 63.

Gyles *againſt* Colſhil.

(7) IN the *quare impedit* of *Gyles* againſt *Colſhil*, the plaintiff made title to the advowſon in fee, and alleged preſentation of one *A. B. who was admitted and inſtituted* &c. who afterwards took another benefice, by which the firſt was void by the act of 21 *H.* 8. [c. 13.] and remained void by the default of the patron, ordinary, and metropolitan, ſo that a title to preſent by lapſe was devolved to the Queen by reaſon of her prerogative; and ſhe preſented one *Grymſdiche*, who was *admitted and inſtituted*, (omitting *inducted*) and that the church is now void by the death of the ſaid *G.* and by reaſon thereof it now belongs to the ſaid *Gyles* to preſent &c. And the defendant, who is incumbent, confeſſed that *Grymſdiche* was *admitted*, *inſtituted*, *and inducted*, at the preſentation of the

The count in *quare impedit*, alleging the preſentation of *A.* by the King, *and admiſſion and inſtitution* accordingly, and that the church is now void by the death of *A.* is good without ſaying that he was *inducted*. [Bendl. 312. 8. C] Dy. 348. 2. Rol. Ab. 353, 354. [Wats Clerg. L. 29, 30, 116, 223. 1. Leon. 156 3. Mod. Ent. 84. 2. Wilſ. 100.] 3. H. 7. 14. Plow. 230.

(7) *Mich.* 26. *Eliz.* *Rocliffe* and others v. the Chapter of *Ripton*. [Bendl. 313.] *Trin.* 11. *H.* 8. *Liſle* v. *Skidmer* [Bendl. 313.]

Note, [Bendl. 312.] That in declarations in *quare impedit* for the King, or for common perſons among themſelves, for the King it ſufficeth to allege *preſentation*, *admiſſion*, *and inſtitution* ſolely in the King, without *induction*, and *induction* is intendible. And it is uſual in the books to have *admiſſion and inſtitution* only, as *induction* with it; as is proved by the books before cited. 15. Jac. Cro. 463. [3. Bl. Com. 243. Wood's Inſt. 20. 156. 3. Salk. 195. 2. Wilſ. 174.]

Queen,

Queen, pretending the church to be void, whereas in truth it was not void, becauſe the ſaid *A. B.* had a diſpenſation and qualification to have and enjoy two benefices &c. and that the benefice became void by the reſignation of the ſaid *A. B.*, and that the Queen preſented the ſaid defendant, who is *admitted, inſtituted, and inducted* &c. upon which the plaintiff demurred for the inſufficiency of the diſpenſation &c. And Whether this pleaded in the declaration, without ſaying inducted &c. be ſufficient, by reaſon that the plaintiff alleged the avoidance of the church by the death of *G.* which implied *induction* &c. and alſo the defendant hath confeſſed induction; ſo the title of the Queen by lapſe was much doubted amongſt all the Juſtices of either Bench, and the Chief Baron; and by the greater number it was holden ſufficiently good, and [in] precedents ſhewn in the caſe of the King, *admitted and inſtituted* only have been allowed. And in this caſe it cannot otherwiſe be intended, but that the preſentation of the Queen was executed effectually to all intents, and then * not revocable; wherefore a writ was awarded to the Biſhop for *Gyles*.

22. H. 6. 27. a. 21. E. 4. 34. 44. E. 3. 3. ix. H. 4. 9. a. 9. Co. 132. Dy. 304, 306, 307, 312, 346, 347. a.

The old Book of Entries, fo 20 N. C. 458, 472, 483. Dy. 217. b. [See 17. Vin. Ab. 343.]

* [361. a.]

Leaſe to two, habendum *to them for their lives, and the life of the longeſt liver, ſucceſſively one after the other and not jointly*, is no jointenancy, but they muſt take in ſucceſſion Br. Leaſes 54 Hob. 172. 313, 314. Dy. 164. Cro. Jac. 564. Co. Lit. 183. b 377. a. Plow. 160. a. 3. Mar. 126. b. 8. Co 93. Dy. 126. b. Ow. 39. 1. Keb. 78. Mo. 637. [Vide ante 160. b. pl. 43. and the books there cited.]

(8) LEASE made by indenture to a mother and ſon *habendum to them for the term of their lives, and the life of the longeſt liver of them, ſucceſſively to one of them after the other, as is directed in the indenture, and not jointly*; and livery of ſeiſin made by attorney accordingly. Whether the entire freehold was in the mother only, was doubted in a ſpecial verdict in replevin: and ruled by the Court that it was; and the remainder to the ſon, and not jointly: and this without argument.

(8) B. N. C. 140. directly contrary that the *ſucceſſively* is void. But Serjeant FINCH remembering the caſe of *Owen* and *Prees*, took the diſtinction, when the *ſucceſſively* is general as B. N. C. 140. is, and when ſpecial as in this caſe, or if, *viz.* or any other explanation follows immediately; *Trin. 3. Car. C. B.* [Het. 20.]

Hilary Term, [361. a.]

20 Queen Elizabeth.

Windſor's Caſe.

(9) THE huſband and wife ſold the land of the wife by indenture, bearing date the 24th of *March*, in the firſt and ſecond years of *Phil.* and *Mar.* for ſix hundred pounds, of which the indenture made mention and acquittance; and they levied a fine accordingly. The vendee, by another indenture of defeaſance, bearing date the 26th of the ſame *March*, reciting the former indenture, covenanted to the huſband and wife, to make to them and to the heirs of the huſband ſuch aſſurance as they or their counſel ſhould deviſe within one year next enſuing; with a proviſo, that if the vendee made default in the aſſurance, then if he did not pay to the vendors within the ſaid year five hundred pounds, he and all others ſhould ſtand ſeiſed to the uſe of the huſband and wife and of the heirs of the huſband. No money was paid, nor any aſſurance deviſed within the year, or tendered to the vendee. † *Of theſe, whoſe right is the land?* And it ſeemed by the opinion of the Juſtices of the Common Bench, that the land ſhall remain in the hands of the vendee, becauſe no default was in him in the nonaſſurance, inaſmuch as no aſſurance was deviſed or notified to the vendee to be made.

The vendee of land covenants to make back ſuch aſſurance as the vendor's counſel ſhall adviſe, proviſo if he do not, to ſtand ſeiſed to the uſe of the vendor; the vendor is bound to propoſe, and require the aſſurance, or the vendee may keep the land.

5. Co. 127. a.

Dy. 371.

19. H. 6. 3. 7. a.

11. H. 7. 21. a. 8. E. 4. 12. a. [Shep. Touch. 164, 134. Doug. 691. 4. Term Rep. 761.]

† Orig. *Ceux. q droit.*

(10) MEMORANDUM, that on the firſt day of this Term the jury appeared in Treſpaſs, where the iſſue was, not guilty: The defendant, by BENDLOWES, ſaid,

A releaſe given on 21ſt *Jan.* ſhall not ſtop the taking an inqueſt on the 23d, by a plea *puis darrein continuance*, for

(10) *Trin.* 36. *Eliz. C. B. Hutton*, plaintiff in debt as adminiſtrator againſt one *Paramour*. The defendant at *niſi prius* pleaded, that the letters of adminiſtration of the plaintiff were revoked *puis darrein continuance*, judgment if they ought to proceed to the taking [of the inqueſt,]

the continuance on which the inqueſt is by relation taken, is on the eſſoin day, the 2cth.
Plea of a releaſe *puis darrein continuance*, ſhould ſay *actio non*, and not *inquiſitio non*.
Hutt. 95. 3 Car. Cro. 102. 10. H. 6. 9. b. 9 Aſſ. 21 31. H. 6. 6. a. Dy. 201, 269, 270.
[1. Bl. Rep. 497. 3. Term Rep. 185.]

ſaid, that this inqueſt ought not be taken, for the plaintiff *puis darrein continuance* had releaſed to the defendant all actions; and ſhewed it to the Court, which bore date the 21ſt day of *January*, which was the morrow of the eſſoign day of the octave of *Hilary*, and therefore diſallowable; for it comes too late, ſince the releaſe ought to be made intermediately between the laſt continuance and this octave, according to the entry *s. after the laſt continuance, and before this day, s.* the octave of *St. Hilary*; wherefore the inqueſt was taken and found for the plaintiff. But if the releaſe had been made before the day of the eſſoign, it would have been pleadable at this day, whether the jury appeared or not, becauſe he had no day to plead it in before now. But note, the form of pleading in this caſe ſhould be *actio non* &c. and not that this inqueſt ſhould not be taken.

[Bul. niſi pr. 310.]

queſt,] and good by WALMSLEY and GAUDY; but ANDERSON and BEAMOND, *e contra*, that † *he ſhould ſay* judgment *ſi actio*; and ſo are divers precedents; *ſed quære* [5. Vin. Ab. 499. pl. 17.]

† Orig. *il direct.*

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* Beamond *againſt* Deane.

In dower the tenant pleading an aſſignment of rent out of the land, muſt ſhew that he had ſufficient eſtate at the time of the aſſignment.
2. Leon. 10. S. C.
26. Aſſ 41. 1. Mar. 91. b. Perk. 79. a. 410. Dy. 304. 7. H. 7. 3. a.

(11) DOWER by *Beamond* againſt *Deane*. The tenant pleaded in bar an aſſignment of a rent to the demandant, iſſuing out of the land whereof &c. made by himſelf for the term of the life of the demandant, by virtue whereof ſhe was ſeiſed in her demeſne as of freehold; without alleging in fact, that he was ſeiſed of the land &c. at the time of the aſſignment. And Whether that ſhall be intended by common intendment, was demurred; but it was ruled againſt the defendant.

Altman's Caſe.

Cutting a trench in a field to carry off the water, is not waſte.
See 2. Leon. 174.
12. H. 8. 2. 15. 33 Aſſ. double plea 9. 29. H. 8. 37. a.
[2. Rol. Ab. 820.]

(12) WASTE by *Altman* was aſſigned in digging a ditch in a certain field, the defendant pleaded *nul waſte fait*; and it was found by ſpecial verdict that the defendant made the trench to carry off the water, by which the field was improved, and not injured. And it was ſaid for the plaintiff by MEADE, that this matter ſhould have been pleaded in bar: but by the opinion of the Court, it is not any waſte.

Manſer

Manſer *againſt* Franklin, one &c.

(13) BILL of deceit of *Manſer* againſt *Franklin* an attorney, ſuppoſing, That whereas the plaintiff was ſued by *A. B.* in debt on bond, the defendant, as his attorney, without any warrant, appeared to the *alias capias* by fraud and covin with the ſaid *A. B.*, and after two imparlances pleaded *non ſum informatus* &c. The attorney ſaid, *actio non*, becauſe he ſays that the aforeſaid *A. B.* proſecuted the action of debt as well againſt the now plaintiff as againſt a ſtranger, who, together with *Manſer*, was bound to the ſaid *A. B.* and the ſtranger retained him to appear as attorney for them both: who ſo appeared, and for default of information he pleaded as above: and he took no traverſe to the fraud and covin; therefore the plaintiff demurred in law; *quære.* And the opinion of the Court was in *Eaſter* next, that the fraud and covin were traverſable.

Deceit againſt an attorney for appearing to an action without warrant, and by covin pleading *non ſum informatus*. Plea, that the action was againſt the plaintiff and *B.* jointly, and *B.* retained him, and for want of information &c. is bad, without traverſing the covin.

F. Nat 96. E. 98. L. Dy. 357. 10. E. 3. 20. a. 17. E 3. 25. a. 10. E. 4. 9. 2. Inſt. 215. 18. E. 4. 3. b.

[But ſee Winch. 90. Palm. 393. 1. Saund. 208.]

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(14) A TENANT by knight-ſervice, having a daughter, enfeoffed his brother by fraud and covin, to the intent that he ſhould take the profits of the land until the next heir male of the body of the feoffor begotten, ſhould be of the full age of twenty-one years, and then to enfeoff the ſaid heir male in fee. The feoffor died without iſſue male, his wife being enceinte, and was ſo at the time of the feoffment, of a ſon, who afterwards is born: *quære* if this colluſion is found by office, how much, *s.* whether all, or only the third part ſhall be in ward by the ſtatutes of 32 and 34. & 35. *H.* 8. [c. 1. & 5.] *quære well thereof.*

If *B.* the King's tenant in chivalry enfeoff *A. by covin* to the intent that *A.* ſhall enfeoff *B*'s heir male when of age, and die, and afterwards a ſon and heir is born; an office found, whether all or only a third part ſhall be in Ward:—*qu.*

Dy. 193, 181. a. 6. Co. 76 a 8 Co. 163, 165. Raſt. Willes 2. 3.

[Wardſhip aboliſhed by 12. Car. 2. c. 24.]

A ſpecial verdict finds that executors received rents, reſerved to their teſtator *his heirs and aſſigns*, and *ſo* aſſets. Holden, that the *ſo* is void, and the heir entitled to the rent.

22. H. 8. 11. 2. Co. 75. 4. Co. 4. 11 Co. 11. Co. Lit. 47. a. Plo. 144. 2. Ro. Ab. 701, 702. 1 E. 4. 1. 21. E. 4. 29. 7. H. 7. 5. Plow. 114. 8. H. 6. 35. b. Dy 56, 110, 112. b. Hob. 53

[Com. dig. Pleader (S. 28.)]

(15) DEBT againſt executors, and iſſue upon aſſets in their hands. The jury find a ſpecial verdict, ſ. that the teſtator made a leaſe of his houſe and of certain implements therein for years, rendering a rent to him *and to his heirs and aſſigns*; and that the *executors* have received the rent continually after the death of the teſtator, and *ſo aſſets*: and alſo they pray * the advice of the Court, Whether that ſhall be adjudged aſſets, or not? And by the opinion of the Court, it is not aſſets; but the entire rent belongs to the *heir*, and the *ſo* void.

(15) *Hil.* 33. *C. B.* rot 1315. (*a*) *Richmond* v. *Barker*. *A.* leaſed to *B* for years, rendering rent to him, his executors and aſſigns, and died during the term; his executors *ſhall* † *have* the rent, not the heir, becauſe the particular reſervation excludes the general by the law. Finch. fo. 27. b. It hath been twice adjudged, *Eaſt.* 4. *El.* 38. That the entire rent iſſues out of the houſe.

† Orig. *naveroit.*

(*a*) The report of this caſe in Cro. Eliz. 217. Ow. 9. & 1. And. 261. agrees as above; but in 2. Leon. 214. it is that the Court held that the heir, and not the executors, ſhould have it. And 1. Rol. Ab. 450. N. 3. S. C. that neither ſhould, for it ceaſed by the death. And ſee 1. Saund. 367. 2. Lev. 13 5. Co. 115. Gilb. on rents, 64—72. Com. dig. Rent. (B. 5.)

The ſecond huſband with the wife, levies a fine in fee of her firſt jointure, the heir within age enters, he takes as purchaſer during her life, and ſhall not be in ward.

Whether after the huſband's death ſhe may enter againſt her fine, —*qu.*

Co. Lit. 326, 365. b. Ley's Rep 8. 19. Raſt. Diſcont. 1. 3. Co. 59. Stat. fo. 123. a. Plow. 56. b. 3. Co. 62. a. Dy. 148.

(16) THE wife had in jointure with her huſband of his inheritance, an eſtate in ſpecial tail, remainder to the right heirs of the huſband. They have iſſue a ſon, the huſband dies; the wife takes a ſecond huſband, and they by fine aliene the land in fee; the ſon being within age enters by color of the ſtatute 11. *H.* 7. [c. 20.]; the ſecond huſband dies; the lord by knight-ſervice enters upon the ſon, and claims the wardſhip: *quære* thereof. Alſo *quære* whether the mother againſt her own alienation by fine may re-enter by the ſaid ſtatute? And in *Eaſter* next, the opinion was, that he ſhall not be in ward, for he is not in as iſſue in tail, but as a purchaſer, during the life of the wife; and ſo it was ruled, and the Court diſcharged as to this point: but *quære* of the other point.

Eaſter Term, [362. a.]

20 Queen Elizabeth.

Earl of Leiceſter's Caſe.

(17) KING *Edw.* 6. was ſeiſed in fee of the manor of *Clyberie*, of which a wood, containing three hundred acres was parcel; he granted the ſaid wood in fee; and afterwards the ſaid wood came back to him, as an eſcheat for treaſon. Afterwards Queen *Mary* granted the ſaid wood in fee; the grantee regranted it to Queen *Eliz.* who hath granted the manor, *and all woods, now or heretofore known or reputed as part, member, or parcel of the ſame manor*, to the Earl of *Leiceſter*. Whether by theſe words the wood paſſed? in Intruſion in the Exchequer. And *M.* 21. it was argued at the Bar and Bench, and ruled againſt the Queen, becauſe it was truly a *part known* in the time of *E.* 6. to which the *heretofore* may be well extended back; and not further back in the caſe of the Queen, unleſs the word *ever* be added; but in the caſe of a ſubject *heretofore*, without *ever* preceding it, ſhall be conſtrued any time paſt &c. by MANWOOD, Chief Baron.

Grant by Queen *Eliz.* of a manor, and all words *heretofore* known as parcel thereof; paſſes one which was parcel in the time of *Ed.* 6. tho' not if it was of a longer time, unleſs it had been "*ever heretofore.*" But ſuch grant of a ſubject would not need the word *ever*.

[Co. Ent. 381. a. 383. b.] [1. Leon. 15.] } S. C.

6. Co. 66. b. 5. Car. Cro. 169. a. Rol. Abr. 186. Ow. 138. Roll. Contin. 273.

[4. Bac. Ab. 213. 3. Com. dig. 452.]

* [362. b.]

(18) NOTE for law, That if tenant in ſocage *in capite* die, his heir being within the age of fourteen years, no *primer ſeiſin* or livery is due; but the heir ſhall have an *ouſter le main una cum exitibus* &c. But if he be of the age of fourteen years or more, at the time of * the death of the anceſtor, he ſhall ſue a livery, and pay relief if any rent be &c. becauſe it is his full age by ſocage.

If the heir of tenant in ſocage in chief be under 14, no livery or *primer ſeiſin* is due; but he ſhall have an *ouſter le main cum exitibus*. If turned of 14, *ſecus*, and ſhall pay relief.

Co. Lit. 77. a. 35. H. 6. 52. Fitz. 259. b. 7. H. 8. Cro. 187. 13. E 3. Livery 1. Stamf. 13. b. 14. a. 4. El. 213. a. 3. E. 3. 10. a. Lit. 28. F. Nat. 256. C. Lit. 18. b. B. N. C. 188, 322. [12. Car. 2. c. 24. aboliſhed all theſe tenures, and their conſequences.]

(19) THE tenant *in capite* levied a fine, which is declared by indenture, to be to the uſe of himſelf in tail, remainder by default of ſuch iſſue to the conuſee, and

If tenant *in capite* levy a fine to himſelf in tail, remainder over in fee, his heir ſhall be in ward to the Queen, tho' the fee paſſed by the fine.

40H. 7. 16. 33. H. 6. 5. 4. H. 6. 19. 20. E. 3. Av. w. 126. 14. H 7. 27. 4. H. 6. 21. b. 35. H. 8. 55. a. 1. Co. 137, 47. b. 27. H. 8. 26. a. 2. E. 6. Br. Formedon 46. Perk. 45. Co. Lit. 22. b. Dy. 199. 3. Leon. 54. [See 12. Car. 2. c. 24.]

and his heirs in fee; the conuſor died, his iſſue within age, he ſhall be in ward to the Queen, and not to the conuſee: [for] although the fee-ſimple firſt paſſed to the conuſee, yet by the limitation of the uſe above, it ſhall be adjudged in him as a remainder, and not as a reverſion; and he is not donor here, but the conuſor &c. by the opinion of the Court.

A termor makes a feoffment, and by letter of attorney delivers ſeiſin, the leſſor being upon the land, and not oppoſing it. This is a good feoffment, and it ſeems the term ſhall not be ſaid to paſs firſt. [See Mr. Butler's note, Co. Lit 337. b. beginning 330. b.] Perk. 45. Co. Lit. 52. a. 2. Co. 24. b. 21 E. 3. 6. 7. E. 4. 20. 11. H. 4. 71. 3 H. 4. 12. 3. E. 2. action ſur ſtat. 25. 29. H. 8. 33. a. 19. Eliz. 354. b. Perk. 222 accord.' Shep. Touch. 203. 1. [Wood's Conv. 545.]

Metteforde's Caſe. *In Cur. Ward.*

(20) A TERMOR for one thouſand years made a deed of feoffment by *dedi conceſſi et feoffavi*, and a letter of attorney to make livery. And afterwards the attorney delivered ſeiſin, the leſſor, being preſent upon the land, ſaying nothing againſt it. *Quære* Whether the land paſſed by the feoffment, ſo that the leſſor may enter for a forfeiture? or that the term paſſed firſt by the words *dedi et conceſſi* the land before livery &c. as WRAY thought *prima facie*, but DYER *e contra*; but by both, the livery by attorney is good enough, and the preſence of the leſſor upon the land is no impediment to the feoffment.

(20) *Mich.* 6. *Jac. B. R.* † Sir *Edward Dawcie*, and *Newdigate*'s caſe. A woman leſſee for life took a huſband, and he in the reverſion bargained and ſold, and aliened to the huſband, without enrollment; and adjudged that the words "bargain and ſell," will not carry the reverſion; but the word "aliene," *per Curiam*, carries it; and in the ſame term it was agreed, that if leſſee for life, and the leſſor join in a feoffment by deed, and no livery be made, ſtill the reverſion paſſes. [5. Term Rep. 124]

Eaſt. 35. *Eliz. B. R.* This caſe came in queſtion between *Read* and *Errington* [Cro. Eliz. 311] and adjudged accordingly, (*viz*) That the leſſee may make a feoffment, notwithſtanding the preſence of the leſſor, and that this is a forfeiture of his leaſe, for the leſſee hath the poſſeſſion, and may diſpoſe of it; but the leſſor may enter for a forfeiture.

A fine was levied after the ſtatute of Uſes, to the intent that the conuſor ſhould have a rent out of the land, though no clauſe of diſtreſs, he may diſtrain for it. [1. And. 51, 52 and Bend. 315 S. P.] Raſt. Uſes 9. 2. Co. 72. b. 1. Co. 47 b. 137. Lit. 47. b. Plow. 59 Jo. 179.

(21) AFTER the ſtatute of 27. *H.* 8. c. 10. a fine was levied of land, the uſe and intent of which was declared by indenture between the parties, that the conuſor ſhould have and receive an annual rent of ten pounds out of the land during his life. Whether the conuſor may diſtrain for this rent-arrear by force of the ſaid ſtatute or not, was demurred in law; becauſe, by ſome, the clauſe of the ſtatute which begins, *and where alſo divers perſons ſtand and be ſeiſed of and in &c.* provides remedy only for rents *in eſſe* in uſe at the time of the making of the ſtatute, and not for future time. But note the words

words after in the ſame clauſe of the future tenſe, *ſ.* " were or ſhall be ſeiſed, to the uſe and intent of any ſuch " rent to be had &c. And, the parties that have, or here- " after ſhall have any ſuch uſe, title &c. in or to any ſuch " rent" &c. And in the next term the caſe was debated at the bar. And at length, by the opinion of the Court, the avowry which was made for ſuch rent was adjudged ſufficiently good, according to the intention of the makers of the ſtatute, notwithſtanding no clauſe of diſtreſs was in the rent.

Dy. 349. Bendl. Rep. ca. 274. accord.' Vide bene ſupra pl. 29.

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*(22) TENANT in tail of a houſe leaſed it for years; and afterwards the leſſor made a feoffment with letter of attorney, who came to the houſe to make livery in the abſence of the leſſee, and commanded the ſervant of the leſſee to come out of the houſe; who did ſo, and in his preſence he made livery. And immediately the maſter returned, to whom the attorney notified the livery, to which the termor agreed, " *ſaving his term.*" Whether this be a diſcontinuance of the entail or not? And by the opinion of the CHIEF JUSTICES, and of Juſtices MANWOOD and MOUNSON, this is a good feoffment and diſcontinuance, and ſo notified in the Chancery.

*[363. a.]

Tenant in tail makes a feoffment, with letter of attorney, who veſts the termor's ſervant, and makes livery, to which the termor agrees "*ſaving his term,*" it is good and a diſcontinuance.
21. H. 6. 53. 21. H. 7. 7. 19. H. 6. 50. B. N. C. 97. Dy. 19. B. 33. a. 97. 131. 324. Br. Surrender 48. 2. Aſſ. 1. 3. 22. R. 2 diſcont. 50. 2. E. 3. 4. 7 E. 3. 33. Feoffment 10. 5. Aſſ. 8. 2. Co. 31. b. Co. Lit. 333. b. 9. E. 4. 18. b. 13. H. 7. 14. b Perk. 43. Dy. 58. Mo. 91. 3. Keb. 581. 2 Ro. Abr. 5. [1. Wood's Conv. 546. Shep. Touch 202. Bac. Ab. Feoffment. (B. 2.)]

Trinity

Trinity Term,

20 Queen Elizabeth.

Burnel *againſt* Fraunces, in Error.

Want of the warrant of attorney of the plaintiff in aſſize, is error.
7. El. 231. a. 1. H. 7. 13. b. 8. Co. 163. a. 38. E. 3. 30. 41. E 3. 1. 3. H. 4. 11. 7. H. 4. 16. Dy. 280, 125. a. 1. Ro. Ab. 290. Bridgm. Rep. 73. 1. Ro. Rep. 305. 18. Eliz. ca. 13. 2. Bulſt. 245.

(23) A MAN recovered by verdict in aſſize, and no warrant of attorney found for the plaintiff, and this was aſſigned for error, brought by *Burnel* againſt *Fraunces*, of land in *Paddington*; and it was adjudged error in *B. R.* *(a)*

(a) Yet by 18 *El.* c. 14. § 1. No judgment after verdict ſhall be reverſed for want of any warrant of attorney; but now ſee 25. *Geo.* 3 c 80. § 1. 13, 19, & fol. 262. b. pl. 33. note (*a*) *ante.*

The ſheriff under a *fi. fa.* ſells a term; afterwards judgment is reverſed; the produce and not the term ſhall be reſtored.
4. Co. 74. a. 5. 90. b. 5. Eliz. 223. b. Jen. cent. 4. ca. 6. 8. Co. 96. b. 143. a. 5. Co. 9. Mo. 573. 3. Cro. 278. 1. Ro. Ab. 778.
[Cro. Jac. 246. 3. Com. dig. 300. Bac. Ab. Execution (Q.) and ſee 1. Term Rep. 729. 2. Term Rep. 44.]

(24) THE ſheriff in the execution of a *fieri facias*, ſells a term of the defendant's, by writ of *venditioni exponas*, and delivered the money in Court to the plaintiff; and afterwards for error the judgment is reverſed; *quære* Whether the term ſhall be reſtored, or only the money? whereof there are divers opinions. And MANWOOD, DYER, and WRAY thought in *Mich.* Term 21. at table, that the reſtitution ſhall not be of the term, (becauſe it was legally ſold through default of the party himſelf,) but of the money only which came in lieu of the term &c.

(24) 26. *El.* adjudged accordingly; but if the term be extended upon *Elegit*, and judgment reverſed for error, the termor ſhall be reſtored to the ſame term, and not to the value of it. *Eſp.* 17. *Jac. B. R.* † *Bathurſt's* caſe. [See Cro. Jac. 246.]

An indictment on 1. *El.* c 1. § 27. muſt ſtate the offence to be "*with intent to ſet forth and extol the authority*" &c. And *contra formam ſtatuti* does not aid the defect.
[Jenk. cent. 6. c. 27. S C.]
Raſt. Corone 6. 11. Co. 58. Dy. 312. a. pl. 86, 183. b.

(25) *A.* was indicted upon the ſtatutes of 1. & 13. of the preſent Queen, c. 1. & 2. of *premunire*, for aiding one *B.* knowing him to be a principal maintainer of the authority and juriſdiction of the Biſhop and See of *Rome*, with theſe words in the indictment, *s. againſt the form of the ſtatutes aforeſaid* &c. for which he is in priſon, and his indictment certified in *B. R.* and for want of

theſe

theſe words, being expreſsly mentioned in the acts *s. upon purpoſe, and to the intent to ſet forth, and to extol the authority &c.* it was thought by the major part of all the Juſtices, (being aſſembled for this purpoſe) that the indictment was inſufficient, notwithſtanding the ſaid words, *againſt the form of the ſtatutes* were in the indictment.

[1. And. 49. 2. H. H. P. C. 192, 193. 1 Str. 495, 496. 2 Bur. 1037. 2. Hawk. P. C. 394. 5. Term Rep. 169, 170.]

* Hilary Term, * [363. b.]

21 Queen Elizabeth.

(26) THERE is a cuſtom in the town of *Denbigh*, in *Wales*, that a *feme covert* with her huſband may aliene her land there, by ſurrender and examination in Court there; and it ſhall bind the wife and her heirs as a fine &c. The wife, after iſſue, made ſuch alienation, and diee, and the huſband ſurvived. *Quære* Whether this cuſtom is abrogated by the ſtatute of *Wales* 27. *H.* 8. [c. 26.]? and if it be, ſtill Whether the iſſue may during the life of the huſband enter by the ſtatute of 32. *H.* 8. [c. 28.]? And by the opinion of WRAY and DYER, the cuſtom is not taken away; becauſe it is reaſonable and agreeable to ſome cuſtoms in *England*, for the aſſurance of purchaſers; for the title of the act is, *for laws and juſtice to be miniſtered in like form as in this realm*; but *Gavelkind* is made void expreſsly [by 34 & 35. *H.* 8. c. 26. § 128.] and other ſiniſter cuſtoms; but SOUTHCOTE held the contrary. But for the ſecond point, all three agreed that the iſſue ſhall not enter by the ſtatute of 32. during the life of the huſband.

A cuſtom in *Denbigh*, that a *feme covert* may by ſurrender and examination in Court, aliene her land there, is not abrogated by 27. *H.* 8. c. 26.

If huſband and wife aliene her land, after iſſue, and ſhe die, the iſſue cannot enter during the life of the huſband.

Co. Litt. 33. b. 6. Co. 61. 2. Co. 52. Davis 30. 40. B. N. C. 109. Dy. 373, 290, 61. 1. Ro. Ab. 556. 2. Inſt. 673 Raſt. Wales 28. Raſt. Leaſes 2 Mo 670. [Com dig. Baron & Feme (G. 4.) 1. Hen. Bl. 344.]

8. Co 73 a. 18. E. 3. 47. Court de Reſc. 9. Fit. 194. E. 213 a. Co. 77. a. 34 E. 1. Cui in vita 30. 8. E. 2. Cui in vita 26. 10. E. 3. 10. Ayel 3. 33. E. 3. Aſſ. F. Travers 36. 11 H. 7. 11. 8. Co. 73. 9. H. 7. 1. Co. Lit. 30. a.

(27) A COPYHOLDER in fee at the will of the lord, according to the cuſtom of the manor, claimed common of eſtovers to be reaſonably taken at all times of the

A copyholder preſcribes that all cuſtomary tenants *ejuſdem tenementi*, inſtead of *ejuſdem manerii*, have common of eſtovers in another manor, and holden bad.

6. Co. 61. 5. Co. 78. b. 1. Leon. 315. 4. Co. 32. a. 43. E. 3. 32. a. 40. Aſſ. 27. 9. H. 6. 62. Preſcription 3. 22. H. 6. 37. 51. 7. E. 4 26. Preſcription 16. 8. E 4. 23. 15. E. 4. 29. 20. E. 4. 10. 21. H. 7. 15. 49. E. 3 19. Dy. 71. 1. Cro. 419.

[2 Ld. Raym. 1230, 1231. Com. dig. Præſcription (H.) and ſee 4 Term Rep. 717. 1. Br. Ch. Caſ. 194.]

the year in the woods and ſoil of a ſtrange manor, by this form and preſcription, *ſ.* That within the manor of which he is a copyholder, there hath been ſuch a cuſtom from time out of mind, that every cuſtomary tenant *ejuſdem tenementi*, (and does not ſay *ejuſdem manerii* &c.) from time to the contrary whereof &c. hath had and ought to have common &c. as appurtenant to his tenement aforeſaid, rendering to the lord of the manor aforeſaid annually two-pence for the verdure &c. And upon this a demurrer in treſpaſs. And *M.* 21. the opinion of the Court was againſt the ſaid preſcription, and judgment given accordingly.

* Eaſter Term,

21 Queen Elizabeth.

Pending a *quare impedit* againſt the Queen, ſhe preſents again on reſignation, and her clerk is in for ſix months; yet if the plaintiff have judgment in the action, he ſhall be removed.

1. And. 180 3. Leon. 139. Dr. St. 36. 11. H. 4. 79. 39. H. 6. 24. 5. E. 4. 115.

(28) A PATRONAGE is purchaſed of the Queen in fee, the church became void by the taking of a ſecond benefice, the incumbent not being ſufficiently qualified, and remained void for two years and upwards. The Queen preſented in right of her crown by lapſe, and her clerk died incumbent; the purchaſer preſented within the ſix months; the Queen alſo preſented generally, and her clerk was inſtituted and inducted, againſt whom and the ordinary the purchaſer brought *quare impedit*. They pleaded in bar the Queen's title as above, upon which there is a demurrer in law; and pending the ſuit undiſcuſſed, the incumbent reſigned, and the Queen preſented the third time, and he is inſtituted and inducted. And afterwards judgment is given for the plaintiff; and he

7. Co. Baſkerville's caſe.

(28) † *John de Eunubery* offered himſelf on the *4to die* againſt the Biſhop of *Bath*, in a plea wherefore *Alan* his official, unjuſtly inducted againſt the cuſtom of the realm *Ankbill*, clerk of the Monks of *Iteneges* into the church of *Eunubery*. After which the ſame *John* moved a plea of advowſon of the aforeſaid church, againſt the aforeſaid Monks; and would not amove it by precept of the Juſticiaries. *Eaſt.* & *Trin.* 1. King *John*. Rot. 29.

The Biſhop ought to execute the writ 6 Co. 52.; ſo agreed *Hill.* 2. *Jac. C. B.* and afterwards in error in *B. R.* upon a *quare impedit* by *Low* v. *Lancaſter*, [Cro. Jac. 92, 93.] upon a ſpecial writ to remove. Ex Lib. Mr. *Maſon*.

had

had a writ to the Biſhop, with a commandment therein to remove the clerk firſt named in the writ of *quare impedit*, and *every other incumbent*. Whether the laſt incumbent of the Queen, being in for ſix months, can legally be removed or not &c.? And by the opinion of ANDERSON, and WINDHAM Queen's Serjeant, and Serjeant BAKER, and GERRARDE Attorney-General, and BROMLEY Solicitor, he is not removeable by this judgment, becauſe he was not party or privy thereto, nor to the writ; but it ſeems that this opinion is not law, though there were twenty ſucceſſive incumbents pending the ſuit &c.

19 H. 6. 68. b. 21. H. 7. 8. a. L. 5. E. 4. 260. 9. H 6. 32. a 15. Aſſ 8. 9. Eliz. 260. a. 21. H. 7 8. a. 2. Rol. Ab. 391. 1. Ro Rep. 242. [17. Vin. Ab. 504. 5. Com. dig 322. Wats. Cler. Law 259 290, 291. 298, 299.]

Michaelmas Term,

21 & 22 Queen Elizabeth.

(29) A SHERIFF having a writ of attachment returnable before the Lady the Queen and her Council in the Star-chamber at *Weſtminſter XV. Paſch.* to anſwer to the ſaid Queen and her council for a certain contempt, and further to do and receive &c. arreſted the party, and took a bond from him indorſed with ſuch a condition, *ſ.* " that if he ſhall perſonally appear before " the Queen's majeſty and her Council at *Weſtminſter* " in *XV. Paſch. and then and there ſhall anſwer* a contempt

The ſheriff on an attachment took a bond that *defendant ſhould appear in the ſtar chamber, and then and there ſhould anſwer*, and holden good within the ſtatute. Dy. 324. pl 32. Noy 54, 40, 172. Gouldſb. 66. 3. Mar. 119. a 10. Co. 101. b. Raſt. Sheriffs 25. 3. Keb. 191. 37. H. 6. 1.

(29) *Mich.* 26, 27. *El. B. R.* rot. 575. [2. Leon. 78. and cited in Ow. 90. & Gouldſb. 54.] *Sackford*'s caſe, " *then and there do anſwer*," makes the bond void, and as was adjudged in *Sackford*'s caſe, in *Eaſter* Term, and the reaſon is, becauſe the defendant may ſuffer judgment againſt him by *nihil dicit*, or *non ſum informatus*; and to bind him *to anſwer* is not reaſonable, nor within the intention of the ſtatute 32. *H* 8. [23. *H.* 6. c. 9.] but if (*perſonally*) be in the bond, it does not make the bond void; as was adjudged in † *Arundell* and *Mantrell*'s caſe.

Hil. 38. *El. Corbett*'s caſe, *B R.* [Cro. Eliz. 466.] debt on a bond to the ſheriff to appear at a certain day in *B. R.* at *Weſtminſter*, *to anſwer B.* of a plea. The defendant ſaid, that this term was adjourned to *Hertford*, and that at the day he appeared there and good. So 29. *El.* rot. 1511. *Laſſell*'s caſe in *C. B.* [Ow. 90. Gouldſb. 54. 61.] *Eaſt* 14. *El. C. B.* entered *Hil.* 41. *El.* rot. 1721. *Skriven* and *Knight*'s caſe [Cro. Eliz. 672.] Bond to *appear &c. and there to receive further as they ſhall award*, was void; alſo it was *before the Juſtices*, and did not ſay which, and of what Court in certain. *Mich.* 42. 43. *El. C. B.* [Noy. 33. Cro. Eliz. 800.] in debt by *Gibbon* v. *White*, Demurrer, *becauſe there* † *is no perſonally* in the ſtatute,

† Orig. *vers point de perſonally.*

[Com. dig. Pleader (2.W.25.) 3.Leon.208. Styl. 234. 1. Hen. Bl. 468. 4. Term Rep. 505]

" by him againſt the Queen and her council committed, " that then" &c. Whether this bond by this article, *and then and there ſhall anſwer* &c. which ſeems to be an addition more than the * ſtatute of 23. *H.* 6. [c. 9.] warrants, be void, or not, was demurred in law. And by the opinion of DYER and WINDHAM, the bond is good enough: for it is tantamount, as to ſay, " *then and there* " *to anſwer to a contempt*" &c. which would have been good. And by this bond no profit accrued to the ſheriff or to any other perſon, but only to anſwer to the Queen &c. which was the intent of the ſtatute 23. *H.* 6. but MEADE *contra:* and judgment given *Michaelmas* 22 & 23. for the plaintiff.

One in execution for the penalties of a *qui tam* information in *B. R.* ſues attaint in *C. B.*; on the writ to let him to mainprize, for the purpoſe of proſecuting the attaint, the recognizance ſhall be taken *to anſwer as well the King as the party*, and in the copulative, to render the body *and* ſatisfy the debt. And where he could not find mainpernors, the Court permitted him to go with a keeper to inſtruct his counſel.

Dy. 250. 3. Cro. 309.

(30) ATTAINT brought in the Common Bench upon a falſe verdict given in *B. R.* upon an information of uſury: and the plaintiff was a priſoner in the *Marſhalſea* in execution for the penalty *s.* as well for the plaintiff the informer, as for the Lady the Queen. And a writ of mainprize with ſufficient ſurety, came from the Chancellor directed to the Juſtices of *C. B.* to enlarge the priſoner for the proſecution of his attaint, and to &c. if &c. and a writ was directed out of *C. B.* to the marſhal to have the body with the cauſe on ſuch a day &c. And the marſhal did not come upon the writ, wherefore he was amerced in the laſt Term forty pounds. And now this Term a new writ was awarded on pain of one hundred marks, directed to the marſhal &c. who returned, that the priſoner was in execution for the debt, recovered as well for the Lady the Queen, as for the party; and therefore without a ſpecial precept or warrant from the Court of *B. R.* he could not, nor would have him in *C. B.* &c. But yet at length he produced the body &c. See the like, *E.* 4. *H.* 5. *rot.* 110. of the removal of a priſoner of the Marſhalſea into the Bench, who was condemned before the ſteward and marſhal of the King's houſehold by a writ iſſuing out of the Common Pleas, *teſte* NORTON, and he was committed to the Fleet for the ſame execution. (31) See for the like in *Fitzherbert's Nat. Brev.* fol. 107. [243. D.] in attaint, and in the printed *Regiſter*, fol. 323. [123. a.] And *M.* 2. & 3. of

Trin. 21. Eliz. Com. Ban. Yelverton's Rep. 156.

21.E 4. 71. Dy. 297. a. 307.

Dy. 250. a. 85.

3. of the preſent Queen, *rot.* 1239. between *Kempe* and *Rythe.* [*ante fol.* 193. *pl.* 20.] *Memorandum*, That in the principal caſe aforeſaid it was much doubted, Whether the recognizance of the mainpernors ſhould be made copulative or disjunctive, *s.* to render the body to the priſon of the Lady the Queen, *or* to ſatisfy the ſum in the condemnation, notwithſtanding the copulative words in the writ. And the precedents in *B. R.* ſince the time of BROMELEY, Chief Juſtice, have been disjunctive; and ſo it was uſed in the ſecond year of the preſent Queen in the caſe of *Kempe* aforeſaid. Alſo it was doubted, Whether the recognizance ſhould be to the Queen and alſo to the party; and reſolved that it ſhall be to both &c. And in *Mich.* Term in the 2d and 3d years of *Philip* and *Mary* * in *B. R. rot.* 253. the mainpriſe was a copulative *s.* as far as appertains to the Queen and the aforeſaid defendant in the attaint of the ſum aforeſaid of the condemnation he ſhould ſatisfy *and* render himſelf to priſon. And in the condition of the recognizance was a *videlicet*, that is to ſay, if the plaintiff in the attaint ſhould fail in any point of the ſaid copulatives, that then &c.—by &c. it is underſtood, that then the recognizance aforeſaid ſhould be good, and ſtand in full force &c. and then the *videlicet* explains the copulative *s.* if he fail in any point &c. And at length it was reſolved in this Term by the Juſtices, that as well for the diſcouragement of ſuitors in the attaint, who are in execution by the trial by verdict, as by reaſon of the warrant to the Juſtices, which comprehends a copulative, the better precedent is to follow that. Wherefore the plaintiff was committed to the Fleet for the execution, without finding any mainpriſe: and by the leave of the Court he ſhall be ſuffered with a keeper to go to his counſel with inſtructions to proſecute the attaint &c. And in next *Trin.* Term the attaint paſſed againſt the plaintiff, affirming the firſt verdict.

16. H. 7. 2. a. 3. Eliz. 195. b. [Vide ante 193. pl. 29. Jenk. c. 3. c. 63.]

8. H. 7. 9. b.

* [365. a.]

F. Nat. 251. Dy. 193.

[Cro. Eliz. 5.]

Sir Francis Leke's Caſe.

(32) IN replevin the defendants, as bailiffs of Sir *Francis Leke*, Knight, made cognizance of the taking of the cattle in *Whitbridge-cloſe*, containing two acres of

In replevin on the queſtion, who ought to keep the incloſure, the avowant ſtated himſelf to be *ſeiſed in fee*, tho' he needed

not to have ſet out any particular eſtate, but generally that he was ſeiſed of the cloſe; yet having done ſo, the preciſe eſtate is traverſable.

Hob. 103. Styl. 403. 2. Saund. 206.

of paſture for damage-feaſant, as in the ſoil and freehold of the ſaid *Francis Leke*; to which the plaintiff pleaded, that before the ſaid time when &c. and at the ſaid time when &c. he was *ſeiſed in his demeſne as of fee*, of and in one cloſe of paſture called *But-cloſe*, contiguous and adjoining to the ſaid two acres of paſture; and that Sir *Francis Leke*, and all thoſe whoſe eſtate he hath, have uſed from time whereto memory runneth not, to encloſe the ſaid two acres of paſture ſufficiently from the aforeſaid cloſe, called *But-cloſe*, and by default of ſufficient encloſure the cattle entered into the two acres of paſture, and depaſtured therein until &c. And the defendants by proteſtation, denying the preſcription, for replication ſaid, that the ſaid *But-cloſe* was the ſoil and freehold of *George* Earl of *Salop*, without this, that the aforeſaid plaintiff at the ſaid time, when &c. was ſeiſed of *But-cloſe* aforeſaid in his demeſne as of fee, as the ſaid plaintiff had above alleged, and this &c. Upon which it was demurred &c. (33) And the opinion of the Court was, that the preciſe eſtate which the plaintiff had in *But-cloſe* was not traverſeable by the defendants if the plaintiff had not ſhewn any eſtate in it, [but] generally that he was (*a*) ſeiſed of it, without ſhewing of what eſtate, or that it was * his freehold &c. And then the other party ſhould be driven to ſay that he had nothing therein; for if he had but common, or a term of years, or at will, or only a licenſe from the owner to put in his cattle *pro hâc vice* it is ſufficient; and then the beſt anſwer to it would have been with a flat negative, *s* that he had nothing in the aforeſaid cloſe at the time &c. which is more ready pleading; for an *abſque hoc* ought to be taken to a thing expreſsly alleged before, and is induced with a former plea *s. as he ſaid before*, or by ſhewing a croſs matter contrary to the plaintiff's plea, as here above, *s.* "that *But-cloſe* was the freehold of the Earl of *S. abſque hoc*" &c. And at length the opinion was, that the *abſque hoc* that he was ſeiſed in *fee*, was a good traverſe, becauſe the plaintiff had given this advantage to his adverſary in this preciſeneſs of eſtate, who beſt knew what intereſt he had to put his beaſts into *But-cloſe:* for if he was a mere

19 H 6. 33. 21. H. 6. 33. 10. E. 4. 7. a.

1. Keb. 223.

6. Co. 24. a.

9. Eliz. 255. b.

* [365. b.]

22. E. 4. Curia Claudend.' 2. 36. H. 6. Barr. 168. 10. E. 4. 7. a. 29. E. 3. 35. a.

2 Keble 718.

24. Aſſ. 2. 6. Co. 24. Mo. 870. Dy. 336. a. 372. pl. 20. [5. Com. dig. 115, 119. Ritz. N. B. 298. Ld. Hale's notes. Doctr. Plac. 354. See Dougl. 665.]

(*a*) In what caſes *ſeiſitus* generally without ſhewing of what eſtate, is bad. See 2. Lutw. 1231. Carth. 9. 444. Salk. 562. 2 Wilſ. 261.

ſtranger

ſtranger and had nothing in *But-cloſe*, nor common there, nor licenſe from the owner, nor command, he was a treſpaſſer to the defendant, although the incloſure was not ſufficient. Wherefore &c. but WINDHAM doubted.

21. H. 6. 33. b. 22. H. 6. 37. a 41. 39. E 3 3.

Lord Crumwell's Caſe.

(34) IN *ejectione firmæ* ſuppoſing the demiſe by Lord *Crumwell:* the defendant ſaid, that long before the Lord *Crumwell* or the plaintiff had any thing, one *I. Blunt* was ſeiſed in fee, and enfeoffed the father of the leſſor of the defendant, who died ſeiſed; and it deſcended to the leſſor of the defendant as ſon and heir &c. wherefore he entered and made the leaſe to the defendant, who was poſſeſſed until he was ouſted, and his leſſor, *Androwes*, diſſeiſed by the ſaid *I. Blunt*, who enfeoffed the Lord *Crumwell*, who leaſed to the plaintiff, upon whom he re-entered *prout* &c. And the plaintiff took a proteſtation to the feoffment of *I. Blunt* to *Androwes* the father, and to the dying ſeiſed, and to the deſcent, and to the demiſe to the defendant *prout* &c. [and] for plea ſaid, that before the aforeſaid time of the treſpaſs, and ejectment &c. the aforeſaid *I. Blunt* enfeoffed the aforeſaid Lord *Crumwell*, who demiſed to the plaintiff *prout* in the writ and count, without this, that the aforeſaid *I. Blunt*, unjuſtly &c. diſſeiſed the aforeſaid *Androwes*, the ſon, as the defendant alleged, and this &c. whereupon the defendant demurred in law. And Whether the diſſeiſin here be traverſable, or the feoffment of *I. Blunt* to *Androwes* the father, or the deſcent &c. was the *quære.*

In *ejectione firmæ* ſuppoſing a demiſe by *C.* Plea that before *C* had any thing, one *B.* was ſeiſed in fee, and enfeoffed *A.* who died ſeiſed, and his ſon leaſed to the defendant, who was poſſeſſed till ouſted, and the ſon diſſeiſed by the ſaid *B.* who afterwards enfeoffed the ſaid *C.* who demiſed to the plaintiff. Replication, proteſting againſt the feoffment to *A.* and the dying ſeiſed, traverſed the diſſeiſin. And holden good, tho' the feoffment or dying ſeiſed might both be traverſed at the election of the plaintiff. [20. Vin Ab. 363.] 3. Cro 15.

10. E. 4. 6. a. 6. Co. 24. L. 5 E. 4. 136. B. Travers per ſans cee 179.

And on the part of the defendant much argument was uſed at the bar by RODES and GAWDY. And for the authority of the books *s.* 21. and 30. *H.* 6. [12.—7. a. pl. 8.] 2. and 5. *E.* 4. [4. pl. 8.] and 4. and 5. *H.* 7. [9. pl. 2.—13.] and divers others, that there where the diſſeiſin is alleged by way of conveyance to the title or poſſeſſion of the plaintiff it is not traverſable, * and eſpecially where the plaintiff and defendant convey from one and the ſame perſon as above. And the ſubſtance of the bar was the feoffment of *I. B.* to the father of the defendant, which, contrary

[4. Bac. Ab. 77. See 1. Hen. Bl. 376. 4. Term Rep. 477.]

* [366. a.]

contrary to his feoffment to enter, cannot be intended by the law to be allowable, without ſpecial matter ſhewn on the adverſe ſide.

3. Cro. 894. 21. H. 6. 6. 12. b.

50. E. 3. 6. b.

10. Co. 90.

A naked colour in *ejectione firmæ*, is not ſufficient as in aſſiſe or treſpaſs, which does not comprehend any title or conveyance in the writ or count, as this action does in both.

(35) But at length in the end of the Term the opinion of the Court was, that the traverſe to the diſſeiſin is well taken as to the chief ſubſtance of the bar; for if *I. Blunt* was a diſſeiſor, that deſtroys the title of the plaintiff, who came to the land under the diſſeiſin; which title of the plaintiff in *ejectione firmæ* ought of neceſſity *s.* by matter in fact or in law, which confeſſes and avoids the title, or traverſes it; for a naked colour in this action is not ſufficient, as it is in aſſiſe or treſpaſs &c. which do not comprehend any title or conveyance in the writ or count, as this action does in both. And according to this is *long quinto*, *E.* 4. p. 5. [fol. 9.] in the formedon much argued. And 9. *H.* 6. [32.] is taken for a maxim in law, and ſo reported by *Brooke* in *Travers per ſans ceo* [pl. 13.] that a diſſeiſin in pleading in bar or replication &c. is always traverſable, and therefore here; and yet perhaps the feoffment of *Blunt* to the father of the ſaid *Androwes*, or the dying ſeiſed, are both traverſable at the election of the plaintiff, and given to him by the ſuperfluous folly of the defendant &c.

6. Co. 24.

[5. Com. dig. 115, ſupra 365. b. pl. 33. Dougl. 665.]

Fowler *againſt* Clayton, and Others.

Avowant makes title by deſcent as collateral heir of *P.* becauſe the ſaid *P.* died ſeiſed without iſſue. The plaintiff, though claiming by deviſe from the ſaid *P.* muſt traverſe the dying ſeiſed, for the deſcent is not traverſable.

Bendl. 319. S. C. Poſt. 377. Roll. contin. 351. LitRep 6. 1. Leon. 310 Vide Bendloſe caſe 285. Pal. 37. 15 El. 16. 1. E. 4. 27. a. Note, the rule of an *abſque hoc* 365. b. 35. H. 6. 38. 5. H. 7. 2. 13. B. N. C. 384. 8. E. 4. 20. [See Co. Ent. 505. Cro. Eliz. 278. Vin. Ab. Traverſe (Y.) & Com. dig. Pleader (G. 10.)]

(36) IN avowry *H. Vernon* and *I. Vernon* conveyed the land of *Edward Graye*, the late Lord *Powes*, to them, as couſins and next heirs of the ſaid *Edward*, by divers collateral degrees, ſhewing how, *becauſe the ſaid Edward died ſeiſed in fee without iſſue* &c. And the plaintiff conveyed the land to himſelf from the ſaid Lord *Powes* by his laſt will in writing, confeſſing the dying ſeiſed as in the avowry, *without this, that the aforeſaid land deſcended to the aforeſaid Vernon and Vernon, as couſins and next heirs of the ſaid Lord Powes, in manner and form as* &c. See 19. *H.* 8. [11. b. pl. 6.] that the defendant in treſpaſs conveyed by deſcent as couſin and collateral heir of *B.* &c. and the plaintiff ſaid, *that the ſaid B. had iſſue a daughter, named Joan, who enfeoffed him*; that was holden a good plea without taking a traverſe, becauſe the dying ſeiſed of *B.*

is

is confeſſed. Alſo it is common doctrine, that the * dying ſeiſed, and not the deſcent, is traverſable; which ſee *E.* 14. *H.* 8. [23. b. pl. 1.] Treſpaſs by *Meringe.* And *Brooke*, in title *travers per ſans ceo*, hath reported a caſe in aſſiſe at *Northampton*, p. 6. where the tenant pleaded a dying ſeiſed of fee-ſimple, and deſcent to him &c. And the plaintiff ſaid, that the anceſtor of the tenant held jointly in fee with *I. S.*, who ſurvived, and enfeoffed the plaintiff, without taking any traverſe to the deſcent, or ſaying, *without this that he died ſole ſeiſed, as* &c. for the dying ſeiſed in fee is in a manner confeſſed and ſufficiently avoided by the ſurvivor, contrary to the opinions in 2. *E.* 4. [11. a.] wherefore the tenant maintained the bar in the aſſiſe, and traverſed the jointenancy. (37) Yet it appears by the record, *H.* 12. & 13. *H.* 8. *rot.* 514. in aſſiſe in *Devonſhire*, before ELIOT and J. BROOKE, where the tenant and plaintiff ſeverally conveyed the land as couſins to one and the ſame perſon; and the deſcent was traverſed by the plaintiff by an *abſque hoc that the land deſcended to T.* &c. and it was found for the tenant, and the plaintiff was barred. And great ſearch has been made for the record of the caſe of *Meringe*, but it is not yet found; (but in the next *Hilary* Term, upon ſearch, it was found); and there it appears that the dying ſeiſed of the beſail of the defendant of an eſtate tail, and a deſcent to the defendant as couſin and heir, and ſhewn how, was pleaded in bar, † *giving* colour to the plaintiff by the donor in tail: and the plaintiff conveyed title to himſelf &c. by the feoffment of the father of the defendant, by which ſhe claimed after the death of the donee, without this, that the land deſcended to the aforeſaid defendant as the ſaid defendant hath above alleged, and this &c. and upon this there was a demurrer by the defendant, and adjudged for her, and againſt the plaintiff, *M.* 12. *H.* 8. *rot.* 639. And according to this precedent it was adjudged in *Hil.* 22. of Queen *Eliz.* WINDHAM not fully ſatisfied. [Carth. 127.]

† Orig. *devant.*

(38) GILBERT GERRARDE, Knight, Attorney General, came into the Common Bench and aſked this queſtion for the Queen *s.* A man ſeiſed of twenty pounds of land, holden of the Queen *in capite*, and of ten pounds

A. ſeiſed of ſocage land holden of a ſubject, and of land *in capite*, deviſed all the latter. The King ſhall have ward of the entire ſocage land, and a third of that *in capite*

Dy 158. 3. Co. 31. con.' Raſt. Willes 2. 3. 7. Co. 31. a. 9. 133. b. cont. 1. Keb. 97. [12. Car. 2. c. 24.]

pounds of land holden of a ſubject by ſocage, deviſed the entire *capita* land to a ſtranger, and died, his heirs within age. Whether the Queen ſhall have the ward of the third part of the *capite* land, and the entire land of ſocage tenure, or not? And by the opinion of the Juſtices ſhe ſhall have it, otherwiſe the ſtatute of 32. and 34. [*H.* 8. c. 1. and 5.] are rendered void, and would be defeated &c.

*[367. a.]

A term is deviſed to the executor who enters and dies before probate, yet his entry is a good execution of the deviſe. Plow 5 0, 543. 18. H. 6. 29. a. Hutt 31. 3. Cro. 816. Mo. 3 52. 4. Co 119. 2. Co 32. 10. Co. 47, 52. Dy. 135. Perk. 110. Jac. Cro. 615. 20. E. 4. 9. b. 15. H. 7. 12. a. 20. Aſſ. 16. Pal. 156. [Salk 301—308 Bac. Exor (E) 14. Ante 277. b. pl. 59. 3. Br. Ch. Cal. 95.]

*(39) THE termor, by his teſtament and laſt will, deviſed his term to one whom he alſo made his executor and died. The deviſee entered before any probate of the will, and occupied the land for a year and more, without any probate, and died. *Quære* Whether his executor (if he make any), or if not, his adminiſtrator if he died inteſtate, ſhall have the term, or not? or Whether the ordinary ſhall commit adminiſtration as of the firſt teſtator? And it was ruled there, that the property of the term was legally in the executor by his entry, and an execution of the deviſe without any probate &c.

That plaintiff and the ſheriff are of the liveries of the ſame nobleman, is not a principal challenge. Tho' miſ-trial is not aided by the ſtatute of Jeofails, yet it is cured by aſſent of parties. Mo. 356. 3 Cro. 664. Co. Lit. 135. b. 157. Dy. 300. 1. Ro Rep. 28. 8. Co 162. b. 8. Aſſ. 23. 12. Aſſ. 13. 26. Aſſ. 50. 44. Aſſ 8. 44. E 3 44 27. H. 8. 13 15 E. 4. 24. Plow. 74. Rol. Contin 363. Stat. of 32. H 8. or 18. El. ca. 14. Dy. 188, 284.

(40) THE plaintiff in *ejectione firmæ* upon the iſſue joined made a ſuggeſtion to the Court, that he, and the ſheriff, and one of the two coroners were of the liveries of the Earl of *Worceſter*; and for that cauſe he prayed the *venire facias* to the other coroner. And the defendant confeſſed the ſuggeſtion. Wherefore the *venire facias* was awarded to the other coroner, who made the panel by which the verdict paſſed for the plaintiff. And now in *(a)* arreſt of judgment this matter was alleged, becauſe the ſuggeſtion does not contain a principal challenge, *ſed non allocatur*, for miſconveyance of proceſs is aided by the ſtatute of *Jeofails*, 32. *H.* 8. [c. 30.] and alſo the ve-

The ſecond reaſon is the true reaſon of the caſe, for an inſufficient trial is not remedied by any ſtatute, as it is when a jury is returned by one who hath no authority; but *omnis aſſenſus tollit errorem*. 5. Co 36 b.

(*a*) By 2. *Jac.* 1. c. 13. § 2. after verdict, judgment ſhall not be ſtayed or reverſed, by reaſon that the *venire facias* &c. is awarded to a wrong officer upon an inſufficient ſuggeſtion: Nor by 4. & 5. *Ann.* c. 16. any judgment by confeſſion, *nil dicit*, *non ſum informatus*, or after writ of enquiry executed.

nire facias was awarded by conſent of parties; therefore the plaintiff had judgment &c.

2. Ro. Ab. 668. 1. Jac. Cro. 21. 1 Brn. 134. [Gouldſb. 38. pl. 12. Co. Lit. 125. b. 126. a. Cro. El. 581. Bul. ni. pr. 306. 3. Bac. Ab. 252.]

(41) *FORMEDON:* the tenant vouched one as couſin and heir; the vouchee came and *gratis* entered into the warranty, as he who hath nothing by deſcent from the ſame anceſtor, without firſt demanding, What have you to bind me to warranty? which he ought to have done (as I think); for the tenant here may bind him by his own deed, if he do not pray that the parol demur for the nonage of the vouchee. And the tenant tendered iſſue, that he had *aſſets* by deſcent, *priſt* &c. And by MANWOOD and others, this iſſue is triable immediately: (which I do not think). And ſee 50. *E.* 3. [12. b. pl. 2.] *formedon*; that where the voucher was generally, the vouchee before his entry into the warranty demanded the lien of the tenant, who ſhewed the warranty aunceſtrel, into which he entered ſpecially as he who had nothing by deſcent: and the demandant immediately counted againſt him as tenant by the warranty. And in *Lib. Intr.* in *Dower in Voucher*, fol. 332. [*Raſt. Ent.* 240. a. b. pl. 3.] which is entered in *Hil.* Term, in the 18th year of *H.* 7. *rot.* 108. [408.] that the tenant vouched one as ſon and heir of the huſband of the demandant, who came by ſummons and demanded the lien (as above): who ſhewed the warranty of the father, into which he, as he who hath nothing in fee-ſimple by hereditary deſcent &c. entered *gratis.* And the demandant immediately made a new demand againſt him as a tenant by the warranty; and he pleaded in bar *unque ſeiſie.*

If the vouchee in formedon enter into the warranty, as he who hath nothing by deſcent, without demanding the lien; iſſue, that he hath aſſets by deſcent is triable immediately, before the plaintiff counts againſt him.

See Plow. Manxel's caſe 5.

41. E. 3. 31. b. 8. H. 7. 6. 27. H. 6. 1. 43. E. 3. 3. a. 22. E. 4. Vouch. 43. 10. E. 3. 31. a.

Inſt. 367. a.

Hilary

* Hilary Term,

22 Queen Elizabeth.

Vincent *againſt* Aſhby and Wife.

Tenant in chivalry makes a feoffment to himſelf, and his wife in tail, remainder to her in fee, and dies. The Lord ſhall have ward of the body of his ſon and heir within age, and of the third part of the land. Co. Lit. 78. By. 252, 370, 60. Coke 10, 83. a. 3. Co. 30. b. 32. H. 8. c. 1. Raſt. Willes 2. 34. H. 8. c. 5. Raſt. Willes 3. [Wardſhip aboliſhed 12. Car. 2. c. 24.]

(42) A MAN made a feoffment to the uſe of himſelf and of his wife, and of the heirs of their two bodies begotten, remainder to the wife and to her heirs for ever: the land is holden by knight-ſervice; they have iſſue a ſon; the father dies; the ſon within age; the mother ſurvives; the body and the third part of the land ſhall be in ward to the lord: by the opinion of the two CHIEF JUSTICES, the CHIEF BARON, and Juſtice MEADE, between *Vincent* and *Aſhby*, and his wife, late the wife of *Browne*.

Ken's Caſe.

Error upon an information of uſury on ſtatute 37. H. 8. c. 9. 1. Ander. 49.

Dy. 95, 159. b. 346. b.

(43) A WRIT of error was brought in the Exchequer-chamber, by *Ken*, of the county of *Somerſet*, upon a judgment given in the Exchequer upon an information exhibited by a ſubject againſt him upon a ſtatute of uſury, before Baron BIRCHE alone, out of Court, and alſo out of Term, to the uſe and behoof of the Lady the Queen, which he afterwards exhibited in the Court. And the defendant came into Court *gratis*, without any proceſs returned by the ſheriff of *S.* to which ſheriff the *ve. fa.* was awarded, whereas the offence of uſury was ſuppoſed in the information in *Middleſex*. And the *ve. fa.* was to anſwer the Lady the Queen only, where it ſhould be to the informer *qui tam* &c. And the defendant pleaded the general iſſue *s.* that he had not, nor did accept the aforeſaid eighty pounds, or any parcel thereof &c. for gain, for the forbearing *and* giving day of payment (copulatively) of the ſaid ſum of five hundred pounds, or of any parcel thereof contrary to the form of the ſtatute &c. And it was found by the verdict that the defendant had

had and accepted forty pounds, parcel of the aforeſaid eighty pounds, for gain &c. for the lending *and* giving day of payment of the ſum of one hundred and fifty pounds, parcel of the ſaid five hundred pounds, contrary to the form of the ſtatute &c. And for the reſidue the jury ſay that the defendant is *not guilty* thereof &c. where the iſſue was that he had not, nor did accept &c. (44) The errors aſſigned were three: firſt, in this, that it was not preciſely alleged in the information who forbore the aforeſaid five hundred pounds, *s. Ken.*, the defendant, or another. Alſo in this, that the Jurors have ſaid that *Ken* had and accepted forty pounds, parcel of the aforeſaid eighty pounds, for gain &c. for the lending and giving day of payment of the ſum of one hundred and fifty pounds, parcel of the aforeſaid ſum of five hundred pounds &c. Alſo in this, that in the ſtatute aforeſaid [37. *H.* 8. c. 9. § 3.] the words forbearing, [or] giving day of payment and forbearance, are disjunctively ſeparate, and the offence is alleged in the information in the copulative, and ſo found by the Jury, which is not according to the ſtatute. Upon which three errors the Court adviſed, with the two Chief Juſtices and other, until this Term.

32. H. 8. c. 30. Raſt. Repleder 1. 11. Co. 57. Dy. 347. b.

6. H. 7. 12.

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* [368. a.]

*(45) TRESPASS upon the caſe brought in *Ipſwich*; the defendant was committed to priſon by the bailiffs, judges there, becauſe he did not find bail to anſwer according to the cuſtom of the town; but yet he pleaded to iſſue by attorney, and by verdict was condemned in forty pounds for coſts and damages, and judgment given accordingly; and a week afterwards the bailiffs, at the requeſt of the plaintiff, committed the defendant to the ſaid priſon in execution; but it is not entered in the record. And afterwards the defendant is ſet at large by the gaoler, the forty pounds not ſatisfied. And the plaintiff brought debt in the Bench againſt the ſaid defendant, and counted all upon the record above, (omitting the commitment in execution). And the defendant confeſſed the judgment as above, and averred the reſidue as ſurmiſe *s.* the ſecond commitment in execution, without ſaying, *and this he is ready to verify by that*

After a recovery in the Court at *Ipſwich*, the bailiffs committed the defendant in execution; but that was not entered on the record; he eſcaped. In debt againſt him, and count upon the record of the recovery, he pleads the commitment in execution, without a *prout patet per recordum*, the plaintiff cannot reply *nul tiel record*; but if ſuch commitment was illegal, he muſt demur.

Dy. 306. 12. H. 6. 1.

Dy. 299.

9. H. 6. 20.

20. H. 6. 24. 3. Bulſt. 295.

that record &c. To which the plaintiff replied, *that there is not any ſuch record by which it may appear that there was any ſuch conceſſion by the bailiff to the requiſition of the ſaid plaintiff as the aforeſaid defendant hath above alleged, and this* &c. To which pleading the plaintiff demurred. And this he might well do by the opinion of the Court, becauſe the defendant hath not alleged in his bar that that ſecond commitment was part of the record aforeſaid, but only by his ſuggeſtion; whereupon the plaintiff had good cauſe of demurrer to the pleading, if the commitment by the bailiffs out of Court had been inſufficient in law. *Quære* this. But afterwards the plaintiff nonproſſed.

7 H. 6. 19. a.

Eaſter Term,

22 Queen Elizabeth.

beginning 20th April.

A having two ſons, binds himſelf and his heirs, and dies; the eldeſt enters on his land, and dies; the youngeſt entering, ſhall be charged as heir, and ſo ſhall his grandſon. See the abridgment of the caſe. Dy. 339, 373, 14. 1. Cro. 151. Plow. 441. a. infra. 373. b. 2. Ro. Ab. 709. Noy 56. Lit pl. 313. [Carth. 127. 1 Br. Ch. Caſ. 245, 247. Bul. Ni. Pr. 300. 2. Caſ. in Ch. 175.]

(46) A MAN ſeiſed in fee hath iſſue two ſons, and binds *himſelf and his heirs* in a bond, and dies ſeiſed of aſſets; and the eldeſt ſon enters, and dies without iſſue; the youngeſt ſon enters; he ſhall be charged by theſe aſſets as ſon and heir to his father, although there was an intermediate deſcent to the eldeſt; by the opinion of WRAY, Chief Juſtice, MANWOOD, Chief Baron, DYER, Chief Juſtice of the Bench, and MEADE. And the ſame is the law of grandfather, father, and ſon. So alſo is the law of a grandfather and two daughters who have two ſons, the grandfather is bound for himſelf and his heirs, and dies ſeiſed of aſſets; the daughters enter, and die without partition made; the ſons enter, they ſhall be charged; and by *Littleton* [ſect. 313.] they ſhall be in as one heir to their grandfather, and they ſhall join in an aſſiſe if they be diſſeiſed, notwithſtanding the ſeveral deſcents &c.

The

The Dean of St. Paul's Caſe.

(47) THE executors of *A. B.* by reaſon of the laſt will of their teſtator, aſſigned for a chantry, lands and tenements of the yearly value of fourteen pounds five ſhillings to the Dean and Chapter of *Paul*'s, to find a competent ſuſtentation annually * of ten marks ſterling for a prieſt for himſelf and his clerk, to chant maſs every day for the ſoul of the teſtator and all chriſtian ſouls in the church of *Paul*'s, to be paid at four terms; which prieſt ought faithfully to attend his office according to ſuch orders as by the Dean and Chapter (for the time being) ſhall be made. And for the ſaid prieſt and his ſucceſſors the ſaid Dean and Chapter ought to find bread, wine, and candles, and all the other ornaments for divine ſervice. And all the other profits of the premiſes by the ſaid executors were aſſigned to be employed for an annual *obit* for the ſaid teſtator in the ſaid church. Which chantry prieſt was found for ſix pounds thirteen ſhillings and four-pence *per annum*, and his duty performed accordingly, until the ſtatute of chantries, [1. *E.* 6. c. 14.] but the *obit* was not kept within five years of the ſaid ſtatute. The queſtion was, Whether the Queen ſhall have all the lands and tenements, or the ſaid annual rent of ten marks, or neither of them? And by the opinions of all the Barons and the Juſtices of each Bench, the Queen hath not title to more than an annual rent of ſix pounds thirteen ſhillings and four-pence, becauſe the land above was not belonging to the chantry above, but to the Dean and Chapter &c. Alſo, the words of the ſtatute are in a copulative, that the Queen ſhall have the land or rent in as ample manner and form as the chantry-prieſt or incumbent himſelf had it; and here the prieſt had not the land &c.

Land given to a Dean and Chapter to pay thereout ten marks annually for a chantry-prieſt, is not given to the crown by 1 E. 6. c. 14. but only that annual rent.

Jenk. c. 6. c. 31. 4. Leon. 156. S. C. 4 Co. 106. b. 108. a. 110. Raſt. Monaſtr. 13. 10. Co. 83. Dy. 337. Gouldſb. 93. Dy. 33. 91. 43. Aſſ. 34 40. Aſſ. 26. Mo. 131, 264.

[Com dig. Uſes (M.)]

Note, That in the caſe of *Adam* and *Lambert* 44. *El.* [Mo. 648. 4. Co. 104.] *Popham* denied this caſe as it is here put; for he ſaid that this caſe was not for the maintenance of a chantry-prieſt, as it is here; but a chaplain generally found for the land.

To

Ante 305, 60. — 313, 92.

To the venerable Juſtices of the Lady the Queen of the Bench, EDWARD, by Divine Providence BISHOP of NORWICH; health in the Lord for evermore.

The certificate by the Biſhop of *Norwich*, to a writ of *unques accouple in loyal matrimony* for *Mym* and his wife. Dy. 305, 313.

(48) THE writ of the ſaid Lady the Queen to theſe preſents annexed, with all due reverence we lately received, by virtue of which writ we certify to you, that having rightly and duly obſerved all and ſingular in that writ ſpecified according to the exigence of eccleſiaſtical law, and having called all in that behalf to be called, we have cauſed diligent and ſpeedy inquiry to be made into the truth of the thing, of and upon the matters aforeſaid in that writ contained, whereby we have clearly and evidently found and diſcovered by lawful proofs, and otherwiſe as in that behalf is required by the canons, that *Elizabeth*, in the writ aforeſaid named, at *Bacon-thorpe*, in the county of *Norfolk*, in the dioceſe of *Norwich*, to *Thomas Grey*, in the writ aforeſaid likewiſe named, was joined in lawful matrimony. In teſtimony whereof we have cauſed our epiſcopal ſeal to be ſet to theſe preſents, our hand being alſo ſet to theſe our letters which we tranſmit cloſe to you the aforeſaid Juſtices. Given at *Norwich*, in our epiſcopal palace there, the 27th day of *April*, in the year of our Lord, according to the courſe and computation of the church of *England*, 1580, and in the fifth year of our tranſlation.

1. E. 3. 22.

9. Co. 19.

* [369. a.]

A lad of twelve years is married, and put to bed to a woman of full age, and dies before the age of conſent; it is a good marriage *quoad* dower, and ſhall be ſo certified by the Biſhop.

6. Co 40. b. 1. Co. 133. b. 49. E. 3. 17. b.

* The caſe was now propoſed in this manner: *viz.* A woman of full age contracted matrimony, *per verba de præſenti*, with a young man within age, *s.* of the age of twelve years, and ſolemnized it in the face of the church, and in ſome way conſummated it, the man being put into the bed with her: and he died within age &c. *Quære* Whether the ordinary in this caſe ought to certify that ſhe was joined in lawful matrimony, or not?

The Solution of the Doctors.

1. Leon. 54. 1. Inſt. 33. a. 6. Co. 22, 40. [Com. dig. Baron and Feme (B. 1.) Salk. 119. 20. Bac. Ab. Dower 1.)]

(49) WE are all of opinion in this caſe, that ſhe is to be accepted and taken for a lawful life, and to be accoupled in lawful matrimony: and that the ordinary ought

ought ſo to certify it as the caſe is put touching dower; altho' otherwiſe they are *ſponſalia de futuro*; yet in a cauſe of dower they ſhall be extended to be true matrimony, *ratione privilegii. Barth. Clerke, Thom. Martin, James Ellis, R. Lougher, Jo. Lloid, Da. Lewis, W. Drurie, R. Forth, W. Clerke, Johan. Griffith, H. Jones, W. Mowſe, Jo. Gybbon, W. Awbury, Edw. Stannap.* See a contrariety in the opinions of ſome of them, *Trin.* 14. of the preſent Queen, [*ante*, fol. 313.] And yet in the next *Trinity* Term judgment was given for the dower upon that certificate, notwithſtanding the exceptions by RODES and GAWDY, that the Biſhop ought to have certified his own opinion and judgment of the ſaid marriage, and not only the inquiſition; but he has certified in effect as much as the writ required.

1. E. 3. 17. 22.

3. H. 6. Baſtard 2.

[Com. dig. Pleader (2. Y. 10.)]

Queſtion by the Lord Chancellor.

(50) *A.* Being poſſeſſed of a leaſe for a term of years, granted all his eſtate and intereſt to *B.* and *C.* and their aſſigns, *to the uſe of the ſaid A. and his wife*, for the term of their lives, and of the longer liver of them. And afterwards the ſaid *A.* gave to a ſtranger ſuch intereſt as he then had in the ſaid lands in leaſe, and died. Whether this grant made by *A.* gave all the term of *B.* and *C.* or not? And it was anſwered by all the Juſtices and the Chief Baron, in a meeting on the firſt day of the next *Trinity* Term, that the gift or grant of him, in truſt for whom the Term was granted, was void, and out of the ſtatute of *ceſtuy que uſes*, [27. *H.* 8. c. 10.] &c.

A leaſe for years aſſigned to an uſe, is not executed by 27. H.8. c. 10.

Jenk. cent. 6. c. 30. S.C. 4. Inſt. 85. 2. Keble 600. Mo. 614. B.N.C. 471. Raſt. Uſes 9. Dr. St. 141. a.

[Gilb. Uſes 198. 1. Wood's Conv. 681 and ſee Mr. Butler's note (1.) to Co. Lit. 271. b. & fol. 278. a.

(50) *Eaſt.* 32. *El.* in *B. R.* it was agreed by the Juſtices, † *that by indenture of ceſtuy que uſe of* a term, the term ſhall not be void

And 1. R. [c. 1.] & 27. *H.* 8. [c. 10.] for the grantee was not *ſeiſed* as the ſtatute mentions, but *poſſeſſed*: otherwiſe it is of a fine to one for years, and afterwards to the uſe of others, as it ſeems; for the feoffee there hath an eſtate of freehold conveyed to him by the common law, and the word *ſeiſed* well ſatisfied. *Hil.* 35. *Eliz. B. R.* in † *Ridley's* caſe.

† Orig. *que pur deb. ceſtuy* &c. I do not underſtand it, unleſs it means by feoffment, which paſſes the land itſelf. See Gilb. Uſes and Truſts, 199.

Kyghly's Case. In *Cur.' Ward.'*

The mortgagee of *capite*, and socage land dies, the mortgagor performing the condition defeats the wardship of the land and body.
Co. Lit. 76. 248. a. Dy. 25. 7. El. 236. a. 13. El. 298. b. 1. Co. 133.
[12. Car. 2. c. 24.]

(51) THE mortgagee of land *in capite*, and of land *in socage*, died, his heir within age: the King seized the whole; and afterwards at the day the mortgagor redeemed the land, and re-entered. The King shall lose the whole, by the opinion of the Court of Wards: yet the heir of his own offer compounded for his marriage.

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* [369. b.]

A *scire facias* does not lie upon the tenor of a record, but an original writ of debt only.
Dy. 217. b. R. 599. Hetley 24. 7. 39 H 6. 18. 3. b. 35. H. 6. 45. Lit. Rep. 39.

*(52) THE tenor of a recognizance in Chancery came into the Bench by a *mittimus*, to the intent to have a *scire facias* upon it out of the Bench. And holden by the Court, that he shall not have it upon the tenor of a record, but only an original writ of debt, and he may count upon the tenor of the record. But *Ford*, Chief Prothonotary, shewed a precedent of this † 9. *H.* 6. to the contrary.

Plomer's Case.

Advising the grantor's adversary, without request to advise the grantor himself, will not destroy an annuity *pro consilio impenso et impendendo.*
9. Co. 50. a. 10. Co. 42. 6. H. 8. 2. a. 32. E. 3. Annuity 30. 9. E. 4. 48. a. 5. E. 3. 55. 41. E. 3. 19.

(53) AN annuity is granted *pro concilio impenso & impendendo* to one *Plomer*, an attorney. There is a dispute between the grantor and a stranger; and the attorney gives advice to the adversary of the grantor, but is not required by the grantor to give advice to him in that matter. Whether this be contrary to the effect and intent of the grant aforesaid? And holden by the Court *primâ facie* that it is not, but that the annuity continues; *causa patet.*

If the ordinary do not give the patron notice of deprivation for not reading the articles, tho' he by other means know it, no lapse shall incur.
Rast Spiritual Laws 4. 4. Co. 75. b. Dy. 328. 2. Ro. Ab. 365. 7 El. 237. a. 18. Eliz. 346. a. 6. Co. 29. a. 18. Eliz. 348. a.
Wats. Cler. Law 29. 47, 48]

(54) THE act of deprivation *ipso facto*, [13. *Eliz.* c. 12.] for not publicly reading the articles of religion in his church in time of divine service, hath a *proviso* therein, *viz.* That no title to confer or present by lapse shall accrue upon any deprivation, *ipso facto*, but after six months after notice of such deprivation given by the ordinary to the patron. The patron of himself hath notice of such not reading, without notice given by the ordinary, or by the guardian of the spiritualities during the vacancy of the spiritual see, and does not present within two years afterwards: it seemed to the Court, that the Queen cannot present by lapse.

(55) IN

(55) IN *ejectione firmæ* not guilty was pleaded, the jury found the title for the plaintiff, and aſſeſſed the damages that the plaintiff had declared for in his count, which were exceſſive for the time of the ejectment &c. but of the damages no evidence was given, nor did the jury pay any regard to them. The defendant brought attaint in the county of *Nottingham*, and aſſigned the falſe oath in every thing that they ſaid. And the verdict for the title was affirmed. And as to the damages the Court would not charge them with any wilful perjury for the cauſe aforeſaid. And this by the report of WRAY.

In *ejectione firmæ* and no evidence of damages given, the jury find the damages laid, which are exceſſive, attaint does not lie.
11. Co. 56. a.

6. E 4. 6. 7. F. Nat. 107.

Clifforde's Caſe.

(56) CLIFFORDE brought a writ of *ejectione cuſtodiæ terræ et hæredis* &c. and counted accordingly; and iſſue upon the traverſe of the tenure was tried at *niſi prius* for the plaintiff, and damages aſſeſſed accordingly. And in arreſt of judgment it was moved, that the action does not lie for the cuſtody of the heir, but for the ejectment from the cuſtody of the land only; and ſo is the *Regiſter*, [fol. 162.] and [*H.* 14.] *E.* 3. [*Fitz. ab. tit. Brief.* 316.] and two precedents in the time of *H.* 5. *viz.* in the years † 7. & † 10. † & 17. *H.* 8. where the writ * was of *ejectione terræ hæred.*' without *(et)*, and the iſſue he did not eject, for no *vi et armis* is in the writ. And becauſe in the caſe above the damages and coſts were aſſeſſed entire for the ejectment from the land and heir, the plaintiff relinquiſhed the damages, and prayed judgment for the ejectment from the land only, and had it.

In *ejectione cuſtodiæ terræ et hæredis*, though it does not lie for the *heir*, if the jury aſſeſs entire damages, the plaintiff releaſing them may have judgment for the *land*
4 E. 2. Gard. 4. 3. E. 3. 7. Gard. 18. 4. E. 3. Breve 126. 10. Co. 130. b. 17. 46. 5. Co. 108. a. 2. E. 2. Breve 782. 13. E. 3. Gard. 123. Fitz. 139. b. 2. E. 4. 26. b. F. Nat. 98. Sty. 399. 9. H. 7. 3. 28. H. 6. 10. 44. E. 3. 13. 48. E. 3. 4. 21. H. 7. 34. 9. H. 7. 4. b. 11. Co. 56. a. 10. Co. 130. 132. 1. Ro. Ab. 784. 5. Co. 108. 2. Bul. 28.
[2. Com. dig. 625, 626. 1. Hen. Bl. 643.]

* [370. a.]

(57) THE ward and marriage of the heir only cannot be granted or aſſigned over by parol without deed, by the opinions of WRAY, DYER, GERRARDE, and KINGESMILL; and ſo PARKINS thought.

The wardſhip and marriage of the heir only, cannot be granted without deed.
26. E. 3. 65. Gard. 159. 46. E. 3. 25. a. 12. E. 3. Grants 59. 7. E. 3. 63. a. 21. H. 7. 36. 12. H. 4. 20. a. 5. H. 7. 36. a. 22. R. 2. Br. 937. Br. Gard. 118. Lit. 25. 116. 4. Mar. 139. b. pl. 37.

(57) This very point is argued in † Plow. conceit. pla. 298. and agreed as here, and the books which ſeem contrary well anſwer.

A. and *B.* are bound jointly and ſeverally for the debt of *A.* without ſaying that *B* is ſurety: *plegiis acquietandis* will not lie, though the jury find that he was only ſurety.
32. E. 3. Monſtr. 17. def. 179. Hob. 53. 29. E. 3. 32 43. E. 3. 11. que giſt ſ. fail mes 48. E. 3. 29. que ne giſt ſ. fail. F. Pledges 9 2. Inſt 20. 9. E. 2. obligat. 16. 39. E. 39. 1. E. 4. 6. a. 43. E. 3. 11. b. Fit. 137. 132. a. Dy. 257. pl. 12. [5. Com. dig. 172. Cro. Jac. 212. 2. Term Rep. 666.]

(59) TWO men are bound jointly and ſeverally for the debt of one of them; and the ſurety is ſued, and requeſts the principal debtor to acquit him, but he does not: wherefore the ſurety, by conviction of the law, pays the debt:—*quære* Whether he ſhall have a writ *de plegiis acquietand'*? And by the opinion of the Court, that writ doth not lie in this caſe, nor in any caſe without expreſs naming of ſurety or fidejuſſor in the writing, as was † *M.* 39. *E.* 3. of a promiſe by parol in city or borough by preſcription. And here the two obligors are proper debtors by their bonds, and not ſurety the one for the other, therefore &c. Although it was found by verdict that the plaintiff put himſelf in pledge for the defendant againſt the debtee, yet he cannot have judgment.

Winterſtoke Hundred's Caſe.

Two being robbed of a joint ſum of money, may join in an action upon the ſtatute of *Winton*. *Secus* if the property were ſeveral
The hundred, to excuſe themſelves on the ſtatute of *Winton*, muſt apprehend the felons, or deſcribe their names, ſo that they may be indicted and outlawed.

Pulton de pace reg. 155.

2. Inſt. 173. 5. Jac. Cro. 187.

Stat. 27. El. c. 13. [8. Geo. 2. c. 16. 22. G. 2. c. 24. 30. Geo. 2. c. 3. 4. Geo. 3. c. 2. § 118. 4. Leon. 18. 2. Hawk. 117.]
7. Co. 7. 6. Co. 29. 18. E. 4. 3. b.

(48) TWO joint owners of a ſum of money are robbed of it by offenders unknown, at *Winſcombe* in the hundred of *Winterſtoke*; where hue and cry was levied by them and notice there given, and the felons not apprehended, nor made known, nor amends made within the ſix months according to the ſtatute of *Wynton*. [13. *E.* 1. ſt. 2.] The defendants, *ſ.* the inhabitants of that hundred, pleaded in bar of an action brought jointly by the parties robbed, that immediately upon the hue and cry made, they made freſh ſuit from the aforeſaid town of *W.* through three other towns, by names, within the ſaid hundred unto the town of *Chute*, which is in the ſaid hundred next adjacent, and there hue and cry was by them given to the inhabitants of that hundred; judgment *ſi actio:* Whereupon was a demurrer. And by the opinion of the Court without argument, this manner of purſuit ſhall not ſerve for excuſe according to the intent of the ſtatute, without apprehending, or anſwering for the malefactors, or deſcribing their names, ſo that they may be indicted and outlawed. Alſo in this caſe, they

(59) *Mich.* 23. *El.* *A.* is robbed, whereupon two are taken upon ſuſpicion, and afterwards are acquitted, ſtill the hundred is chargeable for it, by PERIAM.
A. is robbed by eight, four are taken on the hue and cry, ſtill the hundred is chargeable for the eſcape of the others. *Eaſt.* 24. *El.* by MEAD and PERIAM, [but now ſee 27. *El.* c. 13. § 8.]

may

may well join in the action; otherwiſe it would be if the ſums were ſeveral, and ſeveral properties &c.

[2. Leon. 12. 2. Term Rep. 282. 3. Term Rep. 779. 2. Br. Ch. Cas. 338.]

*(60) THE tenant *in capite* enfeoffed a ſtranger to the uſe of a woman for the term of her life, (whom by God's permiſſion, one of the ſons of the feoffor ſhould marry), remainder to the ſon in tail. The marriage took effect, the father died, the ſon ſhall be compelled to ſue livery for the third part in the life of his wife, becauſe he was the principal cauſe of the eſtate conveyed as above, and it is for his advancement, for he is pernor of the profits.

Tenant *in capite* makes a feoffment to the uſe of a woman whom his ſon was to marry, for life, remainder to the ſon in tail, and dies, the ſon marrying her muſt ſue out livery in her life time.

Dy. 235. 267. 367. b. 32. H. 8 c. 1. Raſt. Willes 2. 34. H. 8. c. 5. Raſt. Willes 3. Mo. 508.

[But ſee 12. Car. 2. c. 24.]

Trinity Term,

22. Queen. Elizabeth.

(61) A WRIT of entry *ſur diſſeiſin in le poſt*, upon a diſſeiſin made to the demandant himſelf within thirty years &c. And the diſſeiſin traverſed, and found by *niſi prius* in laſt *Lent* for the demandant, and damages aſſeſſed by the jury. And in this Term the demandant had judgment, together with his damages and coſts &c. becauſe the ſtatute of *Glouceſter* [6. *Ed.* 1. c. 1.] warrants it, as it ſeemed to the Court. Otherwiſe it would be, if the diſſeiſin was ſuppoſed to be made to the anceſtor of the demandant.

Damages and coſts ſhall be recovered in a writ of entry, *in the poſt*, on a diſſeiſin made to the demandant himſelf.—*Secus* to his anceſtor.

8. E. 3. 23. 22. E. 3. 9. 4. E. 3. 39. 21. E. 3. Dam. 101. Dr. & St. 82. a. 2. H. 4. 13. a. 42. E. 3. 7. b.

[Ante 354. b. pl. 35. 2. Inſt. 285, 286.]

Dr. Dale the Civilian's Caſe.

(62) *ROBERT HORNE*, late Biſhop of *Wincheſter*, in the fifth year of the preſent Queen, granted by his deed to the ſaid Doctor an annual rent or annuity of fifty-three ſhillings and four-pence, iſſuing out of the manor of *Waltham*, parcel of the poſſeſſions of his biſhoprick, with a clauſe of diſtreſs; and the grant was *pro*

Whether an annuity for life out of a manor, granted *pro conſilio impenſo et impendendo*, by a biſhop, confirmed by the Dean and Chapter, be void againſt his ſucceſſor; and whether debt or annuity lies againſt the executors for

arrears in the life of the Biſhop—*quære*. 5. Co. 15. 16. 1. Cro. 49. 9. H. 6. 42. a. 4. Co. 49. Raſt. Leaſes 4. Dy. 213. 3. Co. 39. b. 10. Co. 60. 61. b. [Bridgm. 31. 1. Bur. 219–223. Shep. Touch. 280.]

conſilio impenſo et impendendo for the term of his life; and this grant was confirmed by the Dean and Chapter of *W.* The Doctor brought an action of debt for the arrears incurred in the life of the Biſhop, againſt the executors of the Biſhop, ſuppoſing the manor to be diſcharged againſt the ſucceſſor by reaſon of the ſtatute of the firſt year of the preſent Queen, [c. 18.] made againſt grants, feoffments, and conveyances of Biſhops. Whether by the words of the act the charge of the land be void; and Whether a writ of annuity, or debt only, lies againſt the executors during the life of the grantee, or not, *quære*.

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*[371. a.]

* Michaelmas Term,

22 & 23 Queen Elizabeth.

Rolt *againſt* Neale.

A. in conſideration of a marriage between his ſon and the ſiſter of *B.* covenants to convey land to the ſon before *Eaſter*, at the coſts of the ſon; and *B.* covenants that if *A.* do that, then he will make a general releaſe; tho' *A.* was ready, and his ſon did not tender the coſts, *B.* is not bound to releaſe, unleſs the conveyance be actually made. [5. Vin. Ab. 135.] 2. Keb. 23. pl. 46.

(1) *A.* covenanted with *B.* in conſideration of a marriage to be between the ſon of *A.* and the ſiſter of *B.* that at the coſts and charges of the ſaid ſon, the ſaid *A.* by his ſufficient deed in law would aſſure before the next *Eaſter* the manor of *D.* to the ſaid ſon in tail to the heirs male of his body, remainder to the ſecond ſon in like tail, with divers other covenants. And *B.* covenanted by the ſaid indenture, that if *A.* performed and fulfilled all the covenants on his part to be performed and fulfilled, then he would make a general releaſe to him of all actions &c. *A.* before the day does not perform the ſaid covenant, becauſe his ſon did not offer the coſts and charges &c. *Quære*, Whether *B.* be bound to make the releaſe &c.—Covenant was brought by *A.* againſt *B.* counting upon the whole indenture, with an *although he had not broken any covenant* (note this) *on his part to be fulfilled*; and

Dy. 261. 5. Co. 22. 127.

proteſting that *B.* had not fulfilled any &c. in fact ſaid, that the aforeſaid *B.* did not make any releaſe &c.

(1) *Mich.* † 38, 39. *El. C. B. A.* covenants with *B.* to make aſſurance of a jointure to the wife before *Michaelmas* at the charges of *B*—adjudged, that *B.* need not firſt tender the charges; becauſe it is uncertain what manner of aſſurance he will make; otherwiſe, if it had been certain, as by fine &c. PER CURIAM. So alſo reſolved *Eaſt.* 35. *El.* in *St. Albans*'s Term. [Shep. Touch. 134, 135. 164.]

(2) And

(2) And *B.* pleaded in bar, that the aforeſaid *A.* did not make any aſſurance to his aforeſaid ſon &c. before the Feaſt of *Eaſter*, at the coſts and charges of the ſame ſon &c. Upon which the plaintiff demurred in law. And in *B. R.* it was ruled upon demurrer that *B.* is not bound to make the releaſe, unleſs *A.* make the aſſurance firſt, although he was ready, and the ſon did not offer the coſts and charges to do it &c, in debt by *Neale* againſt the executrix of *A.* whom *Rolt* ſince hath married.

15. H. 7. 10. [Shep. Touch. 164, 165. 2. Saund. 156. Doug. 684. 4. Term Rep. 761.]

And it ſeems, the cauſe of the judgment was by reaſon of a departure in the rejoinder of the bar which was a general bar, *ſ.* that the ſaid *A. hath fulfilled and performed all and ſingular the covenants &c. on his part to be fulfilled &c.* and in the rejoinder he, as it were, confeſſes the contrary, by his readineſs only, and the non-offer of the ſon of the coſts and charges &c. yet, *quære* Whether that be the cauſe?

The plaintiff declaring that he had *performed* all his covenants, and in his replication ſhewing that he was only *ready*, is a *departure*. Co. Lit. 304. a. Dy. 31. a. 253. 6 H. 7. 4. 7. H. 8. Cro. 175. [Bac. Ab. Pleas. (L) 2. Wilſ. 96. 4. Term Rep. 504, 585.]

*(3) A MAN ſeiſed of divers manors, lands, and tenements in fee of ſocage tenure, by his laſt will in writing deviſed all his ſaid manors, lands, and tenements to his ſiſter, and to her heirs for ever, "*except out* "*of this general grant, my manor of R. which I do appoint to* "*pay my debts*;" and made two executors, by name, and died. And one executor died, and the other executor took upon him the charge of the executorſhip; and afterwards he ſold the ſaid manor of *R.* for three hundred pounds for the ſaid purpoſe, in fee: and by the opinion of the Court he may well do it, and that by good reaſon and circumſtance was the intention of the teſtator, and not to leave this reverſion to his heir, but to entruſt his executors with the ſale of it for the ſpeedy payment of his debts.

A. deviſed all his lands to *B. except a manor, which I appoint to pay my debts*, and made two executors; one dies, the other may ſell the manor to pay the debts. 1. And. 145. Dy. 177. 210. a. Co. Lit. 9. b. 181. b. Gold. 2. Brid. 106. Sav. 74. 1. Leon. 235. Perk. 105. 39. 559. Aſſ. 17. 5. H. 7. 12. 15. H. 7. 12. 19. H. 8 10. a. 5. El. 219. a. 49. E. 3. 16. b. [Co Lit. 113. a. note (2) 2. P. Wms. 308. Cowp. 464. 1. Br. Ch. Caſ. 137. Powel on Deviſes 292—306.]

Bloure's Caſe.

(4) THE certificate of an excommunication by ſpecial commiſſioners delegated by the Queen's commiſſion under their common ſeal, upon an appeal from

The certificate of commiſſioners delegates of appeals from the Prerogative Court of *Canterbury* of an excommunication, is good evidence.

(4) *M.* † 42, 43. *Eliz. Mallerie's* caſe, by FENNER and GAWDY accordingly, and that excommunication lies upon ſuch a certificate.

the

8. Co. 68. 7. 12. E 4. 14. 16. a. 8. 20. H. 6. 3. 1. a. 2. Rol. Ab. 590.

the definitive ſentence publiſhed in the Prerogative Court of *Canterbury*, was allowed, and holden good enough, in the Common Bench, *quære*.

DERBY.

Mich. 22. El. C. B.

Deviſe of a *reverſion to A. paying therefore yearly during his life forty ſhillings to* B. gives but a life eſtate, and the forty ſhillings become payable only when the *eſtate* commences.

Yel. Rep. 160, 161. 13. H. 7. 17. 6. Styl. 409. B. N. C. 125. Br. Teſtament 18. Perk. 106. 3. Leon. 180. Ja. Cro. 527. Cro. 92. 3. Co. 21. a. 6. 16. a. 1. Inſt. 9. 6.

[For the diſtinction as to deviſes, ſubject to charges, ſee 2. Black. 938. Cowp. 235. 352. 833. 3 Term Rep. 556. 5. Term Rep. 13. 3. Com. dig. 24. 25. 32.]

[See 2. Black. 1010.]

Ager *againſt* Pool.

(5) THE ſon ſeiſed of a remainder in fee after the death of his father, tenant for life, deviſed it by theſe words; *ſ.* "I deviſe to *D.* my wife, the land that I "have or may have in reverſion after the deceaſe of my "father, yielding and paying therefore yearly during her "life-natural to the right heirs of my ſaid father forty "ſhillings" &c. without any other words; and died, living the father. And by the opinion of the Court, no other eſtate paſſed by this deviſe but for term of life of the wife: and ſhe ſhall not pay the forty ſhillings until the remainder ſhall fall in after the death of the father, becauſe he hath no right heir during his life, wherefore &c. in *quid juris clamat.*

Bond with double condition; in an action for the non performance of one, if the verdict be for the defendant, it is a bar to the whole bond.

B. N. C. 106.

29. H. 8. B. Dett. 174. 126. 6. Co. 5.

(6) THE condition of a bond had two points to be performed by the obligor upon requeſt of the obligee; and in debt on the bond the defendant pleaded in bar, that the plaintiff did not make requeſt &c. and the plaintiff *e contra*; and iſſue joined upon one point, and found by verdict againſt the plaintiff, and coſts alſo by the ſtatute, and judgment that the plaintiff takes nothing by his writ &c. And afterwards the plaintiff brought a new action of debt upon the ſame bond, and the defendant pleaded this matter in bar, and concluded judgment *ſi actio*, and not by way of eſtoppel: and the opinion of the Court was, that the bar above was a perpetual bar to this bond, the verdict being in force, altho' the bond was forfeited for the other point.

Sir

* Sir Rowland Heyward's Caſe.

(7) MEMORANDUM, That by an order in the Chancery, an iſſue was joined in *B. R.* upon a *non aſſumpſit*, and at the laſt aſſizes at *Worceſter*, a verdict, by eſquires and gentlemen, was given in theſe words ſ. "our "verdict is that the defendant, ſ. Sir *Rowland Heyward*, "did not aſſume unto the plaintiff in manner and form "as in the record is ſuppoſed; notwithſtanding, if the "two witneſſes *Higgens* and *Water*, who are ſuppoſed to "be preſent at the time of the aſſumption and promiſe, "made at the *Bell* in *Holborn*, have teſtified the truth "(as we think they have) then we find that the defend-"ant did aſſume, and promiſe to re-aſſure ſo much of "the land contained in the iſſue and record as he "bought of the plaintiff to his own uſe, before or at the "time of the aſſumption made, upon the repayment of "two thouſand three hundred and fifty-two pound by "the plaintiff, to be paid unto the defendant within

In caſe, and *non aſſumpſit* pleaded, if the jury find "*non aſſumpſit*, "notwithſtanding if "the two witneſſes *H.* "and *W.* ſay true, as "we think they do, "then we find that the "defendant did aſ-"ſume," and refer it to the Court; this is a perfect verdict for the defendant, and the laſt part void, becauſe not directly found.

4. Car. Cro. 130. R. 733. Cromp. 44. b. Mo. 858.

30. E. 3. 32. Judgment 145.

(7) Lord † *Sands* v. *Dame Bray*, 15. *Eliz.* One produced as witneſs, ſaid a thing which proved the matter fully. The jurors gave their verdict thus: "If the ſaid witneſſes have ſpoken truth; "otherwiſe we find for ſuch a one:" adjudged a void verdict. Error by *Raymond* v. *Harrard*, [Noy 118.] upon a judgment given in the Court of *Lynn*, in debt upon an *infimul computaſſent* for £.15. 11*s*. 0*d*. it was aſſigned for error that the defendant had pleaded *nil debet*; and upon that iſſue the jury found that the aforeſaid *R.* accounted together with the aforeſaid *H.* and was found in arrears £ 15 11*s* 10*d*.; but beyond the account aforeſaid they are wholly ignorant. And thereupon judgment was given for the plaintiff, but was reverſed, becauſe the jury had not found whether the defendant was indebted or not, which is the point of their iſſue and there it was agreed, if they had found firſt *debet*, or *non debet*. the ſaid circumſtance after ſhall not hurt

Hil. 4. Jac. B. R. Mich. 38, 39 *Eliz. B. R.* Error by *Weſt* v. *Mounſon* [Mo. 431. Cro Eliz. 480. Poph. 110] The caſe was, *Mounſon* brought aſſiſe againſt *Weſt*, who pleaded, no tenant of the freehold named in the writ, and if there be found, *nul tort*, *nul diſſeiſin*; and upon this the aſſiſe found, that the defendant was tenant of the tenement aforeſaid, and in the plaint ſpecified *prout* in the writ aforeſaid is ſuppoſed Alſo they found that the ſaid plaintiff was diſſeiſed by the defendant, "*unleſs the words of the will of I. S have given a good and legal eſtate to him*;" without any ſhewing, or recital of the will; and if upon that whole matter the Court thought that he did not diſſeiſe the plaintiff, then they find, that he did not diſſeiſe; and judgment given for the plaintiff; but now *inter alia* it was aſſigned for error, that the jury having found the ſpecial matter, as they may by *Weſt.* 2. c. 30 the Court had erred in giving judgment of a diſſeiſin upon that verdict, where none was found; but the Judges ought to examine the jury, and to award a certificate of aſſiſe; and agreed that a certificate of aſſiſe is ſuable at the ſuit as well of the plaintiff as of the defendant, and cited Plow. 92. 14. [12. *H.* 4. 10. 43. Aſſ. 5. but by all the Judges, except CLENCH, the certificate of aſſiſe does not lie after verdict and judgment given; and for the main they adjudge, that the verdict is ſufficiently perfect, and ſufficiently found for the plaintiff, inaſmuch as that reference of the verdict to the will of *I S.* is merely void; becauſe the making of the will by *I. S.* and the words thereof are not preciſely found; that if that had been done, although that was collateral, yet being certainly found, the Judges ought to have examined it; and to that purpoſe POPHAM cited † *Pollard* and *Waldron*'s caſe; and FENNER upon the point of error cited † 17. *E.* 3. † 30. *E.* 3. 23. and that judgment be affirmed for the plaintiff, if other matter be not ſhewn.

"three

" three years next after the aſſumption made; and if the " Court ſo think, then we aſſeſs damages twenty pounds, " and for coſts five pounds." And before the LORD CHANCELLOR, having convened with him DYER and AYLOFFE, Juſtices, this verdict ſerves clearly for the defendant, and not for the plaintiff; and this by the opinion of all the aforeſaid, and of the counſel of both parties.

1 Eliz. Cro. 171, 212. 33. E. 3. Aſſ. 99. 2. Ro. Ab. 695.

Iſted *againſt* Stanley.

An executor dies before probate; his executor is not executor to the firſt teſtator; yet if the reſidue was bequeathed to his teſtator, he ſhall have adminiſtration, with the will annexed; elſe ſuch perſon ſhall, to whom it is bequeathed, or in default thereof the next of kin to the firſt teſtator

(8) WHERE the executor dies before the proving of the will, his executor cannot take upon himſelf the execution of the firſt will; but adminiſtration of the goods of the firſt teſtator, with the will annexed to it, is to be committed to the executor of the executor, if the reſidue of the goods of the firſt teſtator (the legacies performed) were bequeathed by his laſt will to the firſt executor; or to ſuch other perſon or perſons to whom the ſaid reſidue is bequeathed; otherwiſe to the next of blood to the firſt teſtator, demanding it. And this (*ex relatione Doctoris Drury*, Judge of the Prerogative Court of *Canterbury*) is the uſage and cuſtom of the ſaid Court, and agreeable to law (as ſeemed to him); to which the Court gave credit.

Ja Cro. 614. 3. Keb. 8. Dy. 367. a. 39. 3. Keb. 777. Swinborne 247. accord. 1. Ro. Ab. 36. 37. 22. 907. Br. Adminiſtration 45. 1. Leon 275. 1. Keb 856. R. 735. 758. Pal. 156. 2. Ro. Rep. 159. 4. Leon. 208. [Swinborne 434, 435. 303.]

Went. Appendix 74, 141. Lovelaſs on Inteſtacy 178, 179. 1. Salk. 302,

(8) *Trin.* 30. *El. C. B.* ✣ *Whitfield's* caſe. No legacy without an executor made. *Mich.* 9. *Car. C. B.* † The caſe was, *I Denn* was poſſeſſed of goods, and being in debt, by his will deviſed all the reſidue of the moveable goods, his debts and legacies paid, to *E* his wife, and made her executrix. *E.* died before any probate of the will, or knowledge of the legacy deviſed to her. *T. Denn* took letters of adminiſtration of the goods of *I. Denn*; and *W.* took letters of adminiſtration of the goods of *E.* and ſued *T. Denn* in the Court Chriſtian, whereupon *T. Denn* had a prohibition; and upon the ſuggeſtion, it was demurred by *W.* and upon argument at the Bar and bench, a conſultation was granted; and by three Juſtices the deviſe to *E.* is good, and *W.* ſhall have the benefit of it.

† Co. 1. 96. 26. *H.* 8. 7. Co. 5 9. b. *Brudnel's* caſe. Co. 5. 28 *Middleton's* caſe, that an executor may releaſe before probate, whereby it ſeems that an intereſt is in him to all purpoſes except to bring an action. [Swinb. 434. Went. 34, 35. 1. Salk. 302, 303. Lovelaſs on Inteſtacy, chap. 4.

In CUR. WARD.

Two proviſoes in two indentures of conveyance of two ſeveral manors to *A.* and *B.* " *that if the feoffor pay,* " *or tender twenty ſhillings to A. and B or*

(9) MEMORANDUM, That two ſeveral conveyances were made to *A.* [and] *B.* feoffees of two ſeveral manors, by two ſeveral indentures, of dates with the diſtance of a year between them, to divers uſes, with

ſeveral

ſeveral proviſoes for liberty to revoke, alter, or diſſolve by * deed the uſes contained in each indenture, by the payment or tender of twenty ſhillings *to the ſaid A. and B. or to the heirs of A.* *A.* died, a tender was made to *B.* the ſurvivor, and to the heir of *A.*; but payment of the twenty ſhillings made only to the heir for both conveyances and proviſoes, as by deed is mentioned. Whether that be a ſufficient revocation for both? And it ſeems by the opinion of the Court, that the tender to the ſurvivor is nothing to the purpoſe; but the payment to the heir of *A.* ſuffices, by reaſon of the disjunctive (*or*). But it ſhould be of forty ſhillings, for each proviſo twenty ſhillings, although the twenty ſhillings was not any duty before to the feoffees. But peradventure, if the doing of any other act or thing which is not for the payment of any ſilver or money, had been in the proviſoes, the doing of one ſingle act would be ſufficient; as a carve of land by deſcent was ſufficient for three ſeveral formedons of three ſeveral carves.

" *to the heir of A. they* " *ſhall be void.*" *A.* dies, tender to *B.* is ill, but to the heir of *A.* good. Yet it muſt be of two twenty ſhillings. *Secus* of a collateral act.

9. Co. 106. 3. Keb. 7. pl. 7.

30. H. 8. Br. 131, 15. H. 7. 2. 13.

Perk. 22. b. 1. E. 3 9. a. Roll. Contin. 411. 20 H. 7. Cro. 62. Plow. 9. b.

[Mo. 261, 262. Powel on Powers 136. 9. Co. 106. b.]

(10) A MAN ſeiſed of two hundred acres of a common moor, enfeoffed another of fifty acres of that moor towards the north. The feoffee put his cattle into the fifty acres, and by defect of incloſure the cattle ſtrayed into the reſidue of the moor, and are there diſtrained damage feaſant by the Lord of the moor: And it ſeems a good diſtreſs, for the purchaſer is bound by the law to incloſe, or keep his cattle within the fifty acres. And ſo ought the Lord of the reſidue to do for his cattle, as it ſeems. And ſo it was adjudged in this term.

If the lord of a waſte of two hundred acres enfeoff another of fifty acres, the feoffee muſt encloſe them, or keep his cattle from ſtraying into the reſidue. And ſo muſt the Lord of the reſidue.

Dy. 281, 367. b. 2. Ro. Ab. 11. 2. Ro. Rep. 289. Mo. 775. 22. E. 4. Cur. claudend. 2. 36. H 6. Barre 268. 10 E. 4. 6. 22. H. 6. 8. 41. 21. H. 6 33 43. 2. Co Sir Rowland Haywood's caſe.

[F. N. B. 298. in notis. 2. Hen. Bl. 4.]

Heiſter *againſt* Evans.

(11) A LEASE made by a parſon or vicar having a cure, ſhall not be in force for a greater time than for ſo long as he ſhall be reſident, and ſerve the cure there, without being abſent above eighty days in a year; and the leſſor for ſuch abſence to loſe the profits of one year of the ſaid benefice &c. 13. of the now Queen c. 17. [c. 20.] All

A covenants that he will not do any act to avoid his benefice in leaſe to *B.* and that *C.* a leſſee of part ſhall pay the rent to *B.* He may plead performance of all the covenants on his part generally, without expreſs aver-

ment that *C.* has paid the rent.
Whether a leaſe made by a parſon, if he abſent himſelf for eighty days, is void *ab initio*, or only from the time of ſuch abſenting—*qu.*
27. H. 8. 10. Raſt. Leaſes 6.

All covenants and bonds made by any ſuch parſon or vicar for ſufferance of any perſon to enjoy any ſuch benefice, or to take any profit thereof (which in effect amounts to a leaſe) ſhall be adjudged to all intents of like force, and no otherwiſe than as the ſaid leaſes are, 14. *El.* c. 11.

One Parſon *Evans* for one hundred pounds before-hand paid, in the ſixteenth year of the preſent Queen, covenanted and granted by indenture to *Heiſter*, to ſuffer him and his aſſigns to enjoy a benefice for twelve years, and the leſſor to ſerve the cure himſelf. In which indenture there is alſo a covenant, that the leſſor ſhall do no act whereby the benefice * ſhall become void during the ſaid twelve years. Alſo there was another covenant, that one *Cave*, a farmer of ſome part of the tithe, ſhould pay annually for ſeven of the ſaid twelve years, to *Heiſter* and his aſſigns, eight pounds. And for the performance of all covenants compriſed in the indenture on the part of *Evans* to be performed, he was bound to *Heiſter* in a bond. And in debt upon the bond, *Evans* pleaded the indenture, and the performance of the covenants thereof until the twentieth year of the reign of her Majeſty, and that he in the ſaid year departed from the ſaid benefice, and was abſent above eighty days in the ſaid year, ſaying generally, that he well and faithfully had fulfilled and kept all and ſingular the covenants on his part to be fulfilled and kept, according to the form and effect of the indenture aforeſaid, until he abſented himſelf &c. as above; without any expreſs averment that *Cave* paid the annual rent of eight pounds during the time &c. *Quære* If it be not implied in the general plea above, *ſ. on his part to be fulfilled?* and holden *per Curiam*, that it is. Alſo to the negative covenant above, he did not make any anſwer, *ut oportet* &c. And upon the plea the plaintiff demurred. *Quære*, Whether the bond and the indenture, and all the covenants above are merely void by the ſtatute of the 14th above *ab initio*, or only after the abſence for eighty days and more (*a*)

* [373. a.]

Co. Lit. 44, 45.

Mo. 641.

[Com. dig. Pleader (E. 25.) (2. V. 13.) Cowp. 125. 578. Bul. Ni. Pr. 165.]

10. H. 7. 12.

[3. Bac. Ab. from 368. to 375. Cowp. 129. 2. Term Rep. 749.]

Trin. 12. *Jac. C. B.* In the argument of *Norton* and *Sym's* caſe, NICHOLAS Juſtice, was of opinion that the covenants are only void within eighty days, and he ought to plead performance until that time. [This caſe is reported Mo. 856. Hob. 12. 1. Brownl. 65. & Godb. 211. but this point not mentioned.]

(*a*) In the old hand in the copy of 1592, in the *Middle Temple* Library, (of which *ante* 71. b. note (*a*)) the following words are added, "*Et ſemble que ils ſont a touts intents* "*de meſne validitie que Leaſes per les parts* "*de* 14. *El.* cap. 11. *et tiels Leaſes encounter* "*le form de* 13. *El.* cap. 20. *ſont expreſſment* "*fait voide immediatement apres tiel abſence.*"

Elme's

Elme's Caſe.

(13) TENANT in tail in ancient demeſne of frank tenure, diſcontinued the entail by fine with warranty, there levied upon a plea of covenant according to the cuſtom of the manor, which is without proclamations, and yet by the cuſtom there, is a ſufficient bar to the entail. And this is pleaded there in a writ of right cloſe in the nature of a formedon, brought by the iſſue in tail; and upon the ſaid plea of fine and cuſtom the demandant demurred in law; and judgment there given for the diſcontinuance and againſt the demandant; and now he hath brought a writ of falſe judgment; and exceptions taken by FLETEWOOD to the writ, becauſe the writ of right wants theſe words, "*little* and *cloſe*," which are words demonſtrative of ancient demeſne; *ſed non allocatur*, becauſe they are not words put in that writ, but only *that juſtly and without delay, and according to the cuſtom of the manor you do full right.* See the *Regiſter* [fol. 9.] Alſo the writ was *aſſumptis tecum quatuor militibus de comitatu tuo* &c. and in the end, *per quatuor legales homines ejuſdem curiæ* &c. And this is the form of the *Regiſter*, therefore *non allocatur*. And afterwards the error was aſſigned in the point of the judgment above, becauſe a cuſtom or preſcription is deſtroyed, and does not prevail againſt a ſtatute made within time of * memory as the ſtatute *de donis conditionalibus* is. Alſo another error was aſſigned in the bar, becauſe the tenant ſaid that the manor was *of the demeſne* of the Lady the Queen, without ſaying *ancient demeſne*. For the firſt point ſee † *E.* 7. fo. 37 in Waſte, & ‡ *H.* 8. fo. 35 & 19. *H.* 6. [64. b.] at the end of the caſe of the rector of *Edington.* by FORTESCUE, that lands in ancient demeſne, as *London*, which are cuſtomary, are not bound by ſtatutes nor limitations, becauſe the tenants and inhabitants there are not contributory to the expences of the Knights in parliament &c. Alſo lands of ancient demeſne are not extendable by execution of a ſtatute merchant or *elegit*. *E.* 15. *E.* 3. 10. [*Fitz. Ab. Tit. Execution* 62.] & 7. *H.* 7. [10. b. pl. 2.] ſubpœna, &2 8. *Lib. Aſſ.* 17. [24.] a cuſtom to deviſe land deviſable in mortmain, is not taken away by the ſtatute of mortmain, or

If in ancient demeſne a writ of right-cloſe in nature of formedon be brought, a fine levied there is a bar by the cuſtom; and if that judgment be reverſed in *C. B.* that court ſhall only adjudge that the plaintiff be reſtored to his action below. But whether the ſtatute *de donis* deſtroyed that cuſtom—*qu.*
1. And. 71. S C. [Jenk. cent. fol. 86,87.] 12. H. 7. Cro. 9. Co. Lit. 60. b. 77. b. 115. a. 50. Aſſ. 9. 44. E. 3. 37. a. Hob. 47. F Nat. 11. G. 19. S. Regiſter 15. Dy. 363. 155. b.

[Ante 164. a. pl. 58. F. N. B. 38, 39.] Cro. 44. 145. Ben. 35. 44. E. 3. 38. 5. Aſſ. 9. Fine is not levyable in ancient demeſne. [But ſee Cruiſe's Fines 93—97, 175. 1. Salk. 340.

* [373. b.]

8. H 7. 4. b. 8. H. 6. 34. Co. Lit 60. 27. H. 6. 27. B. Ant. demeſne 24 2. E. 2. F. Aunc. demeſne 24. 13. b. 118. 7 H 6. 32. a 35. 5. Co. 105. Retorn de vicont 109 9. Co. 129. 9. H. 6. 48. 7. H. 6. 1. 45. 2. 3. 26. 28. Aſſ. 25. 5. H. 7. 10. 11. 11. 7. 21. 7. H. 6. 35. b. 8. Co. 129. 7. H. 7. 10. b. 7. H. 4. 14. a. 5 Co. 6. b. 22. Aſſ. 45. [4. Inſt. 270. Hob. 48. cont.]

[Vide ante 255. pl. 3.] Anne. demeſne 37. 29. H. 8. 33.

Dy. 63 1. H. 7. 20. 22. E. 3. 2. 8. E. 4. 8. 5. Co. 81. 1. Ro. Ab. 888. 2. Bulſt. 190. 2. Ro. Abr. 472. Mo. 94.

[Jenk. cent. fol. 87.]

or *de viris religioſis*. And this hath hitherto been holden *London*, *ſine licentiâ*; yet *Hilary* 30. *E.* 3. 10. [5. a.] a general uſage or preſcription to chaſe a diſtreſs out of the county &c. was taken away by the ſtatute of *Marlebridge*, c. 5. [52. *H.* 3. c. 4.] prohibiting it. Note, If the judgment ſhould be reverſed here, the plaintiff ſhall not have judgment here to recover ſeiſin of the land, which is ancient demeſne; but only that he ſhall be reſtored to his action &c. which will be adjudged there according to their cuſtom above. *Simile* † 37. *Lib. Aſſ.* 4.

Eaſt 1. *Car. B. R.* [Cro. Car.] in *ejectione firmæ*, that ancient demeſne is a good plea after imparlance. [Ante 210. b. in marg. pl. 27. 1. Com. dig. 5. 71.]

In debt on bond againſt the heir, who confeſſes it, but ſhews that a reverſion only deſcended, judgment ſhall be of that *quando acciderit*, and a ſpecial writ to extend the whole land. B. pl. 4. 5. 34. H. 6. 22. 4. E. 3. 15. 2. Ro. Ab. 70. Supra 368. a. 6. Co. 42. F. 286. 40. 43. E. 3. 38. 9. b. 11. H. 4. 20. a. 15. E. 4. 13. a. Dy. 2. 11. 206. Finch 286. Plow. 441. 3. Co. Sir Will. Herbert's caſe. 7. E. 6. 81. a. 2. Keble 606.

(14) DEBT againſt the niece as couſin and heir to the uncle, the obligor. The defendant confeſſed the bond, by *nient dedire*, but that nothing in fee-ſimple deſcended to her beſides a reverſion of thirty acres of marſh in *S.* in the county &c. after the death of ſuch a one &c. The plaintiff may pray a ſpecial judgment upon this confeſſion, *s.* that he ſhould recover the debt and damages of the aforeſaid reverſion, to be levied when it ſhall fall in. And a ſpecial writ ſhall iſſue to extend the whole thirty acres. And it ſeems this was the law before the ſtatute of *Weſtminſter* 2. c. 18.

[5. Com. dig. 213. Carth. 126, 129. 3. Bac. Ab. 33. 2. Black. 1240. 1. Br. Ch. Caſ. 244—246]

Shelley's Caſe.

A. tenant in tail general, has iſſue two ſons *B* and *C*.—*B.* has iſſue a daughter, and dies, leaving his wife enceinte. *A.* ſuffers a common recovery to himſelf for life, remainder to *D.* for years, remainder to the heirs male of *A*'s body, and to the heirs male of their bodies, and dies. Afterwards *B*'s wife is delivered of a ſon; he ſhall inherit now, tho' *C* took by deſcent until he was born.

(15) TENANT in tail general made a leaſe for a term of years, and had iſſue two ſons; the eldeſt had iſſue a daughter and died, his wife being enceinte with a ſon; the leſſor during the term covenanted by indenture with *A.* and *B.* to ſuffer a common recovery with one voucher; which ſo done ſhould be "to the uſe of himſelf "for the term of his life, and after his deceaſe to the "uſe of the ſaid *A.* and *B.* for the term of twenty-four "years, and after the term to the uſes of the heirs male "of his body begotten, and the heirs male of the bodies "of the heirs male begotten." The recovery was ſuffered

fered accordingly, returnable on the octave of *St. Michael*, *s.* on the 9th day of *October*, on which day about the ſixth hour in the morning he died, and a writ of *habere facias ſeiſinam* was awarded, and returned ſerved. And afterwards the ſon in *ventre ſa mere* is born. *Quære*, Whether the uncle, * or ſon, or daughter ſhall have the freehold, the inheritance of it during the term. And in the following term, it was reſolved by the opinions of the Juſtices of both Benches, and the Chief Baron, that the ſon, *s.* the poſthumous, ſhall have the land, as the neareſt and eldeſt heir male; and that ſeems alſo to have been the intent and will of the creator of this ſpecial tail. And the uncle cannot have it as purchaſer, becauſe he is not heir of the body of his father, for the daughter of the eldeſt ſon is heir general; therefore he is not heir male of the body of his father to purchaſe, unleſs he was as well heir as male, which he is not; but he took by the limitation of the ſaid entail by deſcent until the ſon was born. Wherefore &c.

If the recoveror die after the eſſoign day, but before the recovery executed, it is good, and execution may be had againſt the iſſue in tail. 1. Co. 93. Mo. 136. [1. And. 69.] [Jenk. cent. 6. c. 40.] S. C. 3. Co 62. a. 20. H. 6. 44. 7. H. 7. 5. b. 2. Keb. 299.

Coke 103. b. 9. H. 6. 24. a. B. N. C. 303. 51. H. 3. Br. Noſme 1. Done 61. 7. H. 4. 6. Plow. 49. 10. H. 6. 5. 33. E. 3. Entry congeable 51. [Prec. in Ch. 461. 1. Str. 35. and ſee Mr. Harg. elaborate note (3) to Co. Lit. 24. b. 1. Term Rep. 630.]

Alſo all the Juſtices, except PERIAM and DYER, thought that the recovery is executory againſt the heir in tail after the death of his father: and this appears by the opinion in *Manxell*'s caſe, the laſt caſe and folio of *Plowden*'s Commentaries.

Plow. 14. a 12. E. 4. 19. b. Inf. 376. b. 1. Co. 88. [Cruiſe Recoveries 155. 200. Ante 35. pl. 28.]

Gerrarde *q. t. againſt* Worſeley.

(16) SIR *Robert Worſeley* ſeiſed of certain land in fee in the county of *York*, having iſſue two ſons, the eldeſt *mulier*, the youngeſt, baſtard, covenanted by indenture enrolled in the Chancery, with his eldeſt ſon and two others, ſtrangers, to convey the ſaid premiſes to the ſaid two ſtrangers in fee, before a certain day, to the uſe of himſelf for term of his life, and after his deceaſe to the uſe of the eldeſt ſon, and of the heirs male of his body; and for default of ſuch iſſue to the uſe of the ſaid baſtard-ſon (calling him *Richard Worſeley*, his baſtard-ſon) in like entail &c. And further covenanted and granted, that he and all other perſons who were then ſeiſed or might be ſeiſed &c. ſhould be and ſtand ſeiſed to the ſaid uſes and intents, and to no other uſes or intents: and

A leaſe for years by one out of poſſeſſion made off the land, and for the purpoſe of trying the title, is within 32. *H.* 8. c. 9. Conſideration of natural affection will not raiſe an uſe to a baſtard. 1. And. 75. N. E. 257. pl. 12. S. C. [Ante 74. b. pl. 19.] Bendl. 113. 1. Mar. 96. a. 41. E. 3. 19. 6. Co. 65. 1. Keb. 268.

1. Co. 83, 84. 86.

Plow. 404.

and that if any of them to whom ſuch remainder or uſe was ſo limited ſhould make diſcontinuance, or do any other act or prejudice to any of the remainders, that then his eſtate and intereſt ſhould ceaſe: and then the ſaid two ſtrangers and their heirs ſhould ſtand and be ſeiſed to the uſe of the next in remainder, and of his ſaid heirs, to whom the next uſe of the inheritance is limited &c. But no eſtate at any time was conveyed to the two ſtrangers, or uſe altered, but only by the ſaid words of the indenture. After this, Sir *Robert* ſurrendered, and granted all his eſtate and intereſt to the eldeſt ſon and his heirs: the eldeſt ſon levied a fine with proclamations * executed; the baſtard pretending title and right of entry for the ſaid covenant or condition broken, after the five years at *Chelmsford* in *Eſſex*, without entry, made a leaſe for the term of ſeven years, to the intent to try the title in an *ejectione firmæ*, Sir *Robert* and his ſon then living. (17) *Quære* Whether this be within the ſtatute of buying of titles [32. *H.* 8. c. 9.] (for it was demurred upon evidence to a jury of *Eſſex*, where the iſſue was, that the defendant, *ſ.* the leſſor did not demiſe againſt the form of the ſtatute,) for which an information by bill was brought in *C. B.* by GERRARDE againſt *Richard Worſeley* the baſtard, within the year after the leaſe made by the pretender of the title, *ſ. Richard* the baſtard. And by the opinion of all the Juſtices, the plaintiff ought to recover: and this leaſe is within the ſtatute, according to the opinion in *Partridge*'s caſe. [*Plow.* 77.]

* [374. b.]

Dy. 7. a. 202. a. 18. E. 4. 25. 22. E. 4. 13. 14. H. 8. 18.

[2. Wilſ. 45. Dougl. 485, 486.]

14. Aſſ. 10. N. E. Tit. Error. fo. 257. nu. 12.

Noy 25. 29. E. 3. 14. b.

[Mo. 266. acc.' but Co. Lit. 369. a. b. cont.' if to try the title. 3. Bac. Ab. 526. 1. Hawk. P. C. 556.]

And alſo all the Juſtices, except PERIAM, held that the uſe could not be carried to the baſtard without expreſs conſideration, becauſe the conſideration in law is not good and legal, becauſe he is not of the blood of the father, but in law a mere ſtranger &c. Alſo, that the title of the baſtard to enter, if any &c. is barred by the fine by his nonclaim &c. Alſo, he is not the next in remainder, to enter for the ſaid forfeiture, living the father &c. who hath a new title come to him. *Quære* thereof, becauſe it ſeems that the entail in the father is in abeyance.

[Vin. Ab. Baſtard (P.) Uſes (K.) Ante 296 pl. 23. 5. Bac. Ab. 363. Co. Lit. 123. note (8.)]

Plow. 307. b. Dy. 3. 345. 313. 2. Keb. 523. Lit. 416. R. 229. 1. Co. 104, 135.

(17) Note, That in the written book there is a remainder limited to the heirs of the body of the father after the death of the eldeſt ſon without iſſue, and after the remainder to the baſtard ſon as before.

Hilary

Hilary Term,

23 Queen Elizabeth.

(18) A LEASE for years is made of a farm with divers closes thereto belonging, by the words *demiseth, granteth, and to farm letteth &c. together with all and all manner of timber-wood, underwood, and hedge-rows thereunto appertaining, except, and always reserved, all manner of great oaks growing and being in one of the closes (by name) and about the farm-house), to have and to hold the said farm and closes with their appurtenances to the said lessee, his executors, and assigns, for the term of twenty-one years, rendering an annual rent.* *Quære* Whether the lessee may cut down and sell the timber trees not excepted, without impeachment of waste, or not? And it seemed to DYER that the defendant may well cut down and sell the timber trees not excepted, by reason of this word * *grant* of timber-woods; and also by the meaning of the exception of *great oaks* &c. And also the *habendum* which is the limitation of the term of years, says nothing of the timber woods &c. wherefore &c. But PERIAM, WYNDHAM, and MEADE, *e contra:* and according to their opinion, judgment was given against the defendant.

A. demiseth, granteth, and to farm letteth &c. together *with all manner of timber trees, great oaks excepted*, yet the lessee may not fell timber.
Dy. 90. 184. 11. Co. 48. a. Hob. 234. Mo. 881. 2. Bulst. 6. 7. E. 6. 79. a. 12. E. 4. 8. Dy. 185. 362. 273. a. Bend. Rep. ca. 96.

* [375. a.]

11. Co. 48. Dy. 90. Hob. 329. Mo. 831. [Shep. Touch. 91.]

(18) One by his deed *covenants and grants* to his lessor and two others, and each of them, that he will surrender his term at *Michaelmas* next ensuing. And SNIGG moved, that this shall be a present surrender; but three Judges, that it is not; for they said that these words of *grant* being with the other words of *covenant*, are only words of covenant, and shall be so taken as to the words. *Trin.* 23. *Eliz. C. B.* ✝ *Parson's* case.

Mich. 26. *El. B. R.* A copyholder who hath common in the waste of a manor *covenants and grants* to the lord of the manor that he may inclose part of the common and keep it in severalty, abating his cattle in the common as it shall be agreed between the commoners of the said waste. And it was moved, Whether this shall be a grant of the common by reason of the word *grant?* And by WRAY and CLENCH it is only a covenant, and this word *grant* coming with the word *covenant*, shall be taken for a covenant. [Ante 273. a. pl. 34.]

Whalley's Case.

(19) *RICHARD WHALLEY*, Esq. in the eighth year of the present Queen, brought assise against divers tenants

Assise may be adjourned into a foreign county to plead; and when afterwards taken in

(19) See *Crouch* and *Hayne's* case, *E.* 1. *Car. B. R.* fo. 67. [1. Jon. 66. Lat. 57. Noy. 76. Godb. 407. 2. Rol. Rep. 352.] for the whole case. And *Trin.* - - - - *Car.* ✝ *Metcalfe* and *Bingley's* case, which is entered *East.* 1. *Car. Rot.* 951. and *Heydon* and *Shepherd's* case, 12. Jac. Cro. 341. Co. Plac. Coron. fo. 22.

the proper county, no reſummons of the recognitors is neceſſary
Want of the venue in the teſte of the *habeas corpora recognitorum* is not error.
On error from *B. R.* in *Parl. Proc.* the Chief Juſtice carries up both the record and a tranſcript; but when examined, the tranſcript alone remains; the record is remanded.
The writ of error in parliament may be returnable at the next ſeſſion.
Jenk. c. 6. c. 29. S. C. [Booth real action 279. Com. dig. affiſe (B. 25.) 1. Bac. Ab. 584. 2. Crompt. prac. 389.] [5. Com. dig. 297. Cowp. 843. Doug. 352. note (3.)] 2. Bulſt. 162. 164. 171. 1. Rol. Ab. 745. 753. 1. H. 7. 19. b.

R. 196.

tenants of *Ermiſted*, and recovered by verdict: and afterwards they brought a writ of error in *B. R.* and aſſigned the errors, in that the Juſtices adjourned the aſſiſe into a foreign county for pleading, and there it was pleaded to the aſſiſe: and afterwards the aſſiſe paſſed for *Whalley*, without any writ of reſummons of the aſſiſe firſt awarded. And the ſecond error was, becauſe no place was in the *teſte* of the writ of *habeas corpora*, *s.* &c. But notwithſtanding this, the judgment in the aſſiſe was affirmed in *B. R.* And now in this preſent ſeſſion of parliament, the tenants ſued another writ of error upon a petition ſigned by the Queen, and *thereupon* † *in the term, the roll itſelf of record*, and alſo a tranſcript in parchment were brought by WRAY Chief Juſtice, into the upper chamber in parliament; and being there examined by the Court, the roll was remanded back into *B. R.* and the tranſcript remained in the Court of Parliament. And there, upon aſſignment of the firſt errors, and five more, a *ſcire facias ad audiendum errores* was awarded under *teſte* of the Queen againſt *Whalley*, returnable at the next ſeſſion of parliament.

22. *R.* 2. fol. 3. *Heydlowe*'s caſe, Parl. 1. *R.* 2. memb.' 3. Act 28. 12. *R.* 2. Act 19. 29. *R.* 3. Act 26.

Note, That in Mr. *Hackwell*'s Book of the Parliament, 17. *R.* 2. between ſheets 13 & 14, we read,—Note, That in all caſes where a man for error in *B. R.* requires the reverſal of a judgment by parliament, in his bill he ought to ſhew ſome ſpecial error upon which a *ſcire facias* ſhall be granted.

† Orig. *ſur ceo le tme et rolle m dq record.*

* Eaſter Term,

23 Queen Elizabeth,

beginning on the twelfth day of April.

(20) A LEASE is made for term of life, rendering rent; the rent being arrear, the leſſor made his executors, and died ſeiſed of the reverſion, and that deſcends to his heir. Whether the executors may diſtrain for the rent-arrear in the life-time of the teſtator, or have a writ of debt? becauſe the ſtatute 32. *H.* 8. c. 37. by the words ſeems to extend only to rents in groſs &c. in fee, fee-tail, and for term of life, and not to rents incidental to reverſions. See the intendment of the ſtatute. But it ſeems by 10. *H.* 6. [11.] & † 37. *H.* 6. fo. 39. that an action of debt by the common law lies for rent reſerved upon a leaſe for life after the death of the leſſor, by the executors or adminiſtrators. And divers thought that the ſaid caſe ſhall be intended within the purview of the ſaid ſtatute of 32. *H.* 8.

A. makes a leaſe for life rendering rent, and dies. Whether his executors may, under 32. *H.* 8. c. 37. diſtrain, or ſue for arrears incurred in the life of *A.*

Co. Lit 126. b. 4. Co. 49. 44. E. 3. 43. Raſt. rents 2. 17. E. 2. F. Execute 112. 4. E. 3. Execut' 98. 19. H. 6. 41. 28 H. 6. 18. F. Nat. 121. d. 11. H. 6. 15. a. 2. H. 6. 8. b. 44. E. 3. 42. a. 45. E. 3. Execut.' 71.

[For the learning upon this ſubject, ſee Mr. Harg note (4.) to Co. Lit. 162. a. and (1.) to 162. b. Vin. Ab. rent (S. b.) 2. Com. dig. 636. 1. Lord Raym. 172. And now 8. Ann. c. 14. § 4.]

Sir Francis Knoles' Caſe.

(21) *F. E.* in the firſt year of the preſent Queen departed beyond the ſea with licenſe of the Queen for certain years; after the expiration of which, *s.* in the fifth year, the Queen ſent him a privy ſeal to return upon his allegiance, which he received, but did not return, but adhered to her enemies, whereupon a ſeizure was made of his wife's land: and in the eighth year the Queen granted a manor, parcel of the (*a*) lands, and all the profits thereof by patent *as long as they ſhould remain in her hands.* And afterwards, by the act of fugitives, by

Before 13. *El.* c. 3. the Queen grants the manor of a fugitive, (ſeized for not returning after licenſe determined by her privy ſeal,) for *ſo long as it ſhall remain in her hands.* After that act, and 14. *El.* c. 6. ſhe ſeizes it again, and one as her ſteward grants a copyhold, this is void, for the firſt patent remains good; and the patentee alone may keep courts, and grant copies.

(*a*) In the old hand-writing in the copy of 1592, in the *Middle Temple* Library (of which ante 71. b. note (*a*) there is this note: "Semble per ceo cas et per le cas del Ducheſs "de Suffolk ſupra 2. Eliz. 177. que forfeiture des profits des terres de fugitives fuit "devant 13. El. uncore que ils avoient licence "ſils ne retorn quand un privie ſeal fut mis "a eux. Mes quære per quel ley leur terres, "car le ſtatute de 5 R. 2. done ſolement "forfeiture des biens v. 1. Eliz. 165. et 13. "Eliz. 296.

1. And. 95. 1. Leon. 10. Mo. 109. [Jenk. cent. 6 c. 35.] S.C.

Poph. 18. 7. Co. 11. b. Dy. 276. 128. b. 171. Mo. 779. b. 2. Ro. Rep. 13. 4. Leon. 140. Raſt. Fugitives 1, 2.

licenſe or without licenſe, made in the 13th year, c. 3. the forfeiture of all their lands and of their wives lands was given to the Queen during the lives of the fugitives. And by the act of the 14th, [c. 6.] (becauſe ſome were in doubt whether the Queen might make leaſes, or grant copyholds, or uſual wood ſales of the lands, or only take the ordinary profits as they ariſe as the veſture of the land,) it is explained and enacted, that during the time of the Queen's title ſhe may demiſe and grant copyholds, and uſual wood-ſales, and all other things to all intents and purpoſes, as tenant for term of *auter vie* legally might. After that a new ſeizure is made by the Queen, and two ſtewards appointed jointly by patent; and the one held a court by the conſent of the other, and took a ſurrender, made into the hands of the Queen by a copyholder for life; and the ſteward granted it to three others for the term of their lives. Firſt, Whether the Queen by either of the two ſeizures had poſſeſſion, and might hold a Court after the patent as tenant, or but as pernor of the profits only? Alſo, Whether a grant of the copyhold above be good, or not? And at length it was reſolved, by the opinions of the two Chief Juſtices, the Chief Baron, Baron SHUTE, and MEADE Juſtice, that the ſecond ſeizure does not give any other or better ſeiſin in the manor than the Queen had therein by the firſt ſeizure, notwithſtanding both the ſaid * ſtatutes; and therefore conſequently the Court holden by the Queen, and not by the patentee, is void, and the copy alſo for the cauſes aforeſaid: and ſo it was adjudged in the Exchequer in this Term for Sir *Francis Knoles*.

21. E. 4. 46. Dy. 62.

2. Keble 196. [But ſee 176. b. pl. 30. ante, in margine.]

4. Co. 23. 24. Mo. 111.

* [376. a.]

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(22) MEMORANDUM, It was greatly doubted by many, Whether the act of the 13th of the preſent Queen, c. 8. againſt uſury, be expired by the laſt ſeſſion of parliament, or ſtands at this preſent time in force, the words of the act being as follow, "*this act to* "*continue and endure for the ſpace of five years next after the* "*end of this preſent parliament, and from thence until the end* "*of the firſt ſeſſion of the parliament then next enſuing.*" The parliament of the 13th ended in the ſame year; the five years thence next finiſhed in the 18th, in which year the ſecond

13. *El.* c. 8. made to continue for five years, and *from then to the end of the firſt ſeſſion of the parliament next enſuing*; holden to mean the firſt ſeſſion of a new parliament, and not the next ſeſſion of a parliament then in being.

[Jenk c. 6. c. 34. S C.]

Raſt. Uſury 8. 2. Cro. 678. Rol. contin. 398, 414.

ſecond ſeſſion of the parliament, begun in the 14th year, was holden. After which ſecond ſeſſion of the ſaid parliament, the laſt ſeſſion of the parliament of this twenty-third year is the firſt ſeſſion of parliament next enſuing the five years: Whether the words, *next enſuing*, have relation to the next ſeſſion, or to the next parliament? And it was holden by the Lords of the Council and the major part of the Judges, that the words ought to be referred to the next parliament, and not to the next ſeſſion, which is not the ſubſtantive, (*a*) *but the parliament is the ſubſtantive*. And principally the better conſtruction is to be made for the commonweal; and it is declared by proclamation to be ſo taken.

Dy. 226. pl. 37. 9. Co. 47. 53. 3. Cro. 389. Mo. 366. R. 201.

Dy. 14, 15.

(*a*) Theſe words in *Italics* are left out in the later editions, but are found in that of 1594.

(23) THERE was great contention this Term, Whether a writ of correcting errors will lie upon a judgment given at *Rye*, which is a member of the Cinque Ports, or in any other of their towns, returnable at *B. R.* at *Weſtminſter*, or in *C. B.* by writ of falſe judgment, or not. But becauſe no ſuch writ could be found in the *Regiſter* † *nor* in any of the precedents of the Courts aforeſaid, the Lord Chancellor BROMELEY, by the opinion of the CHIEF JUSTICES of both Benches, denied to grant ſuch writ. And it was ſaid, that by the cuſtom and uſage of the Cinque Ports, ſuch falſe judgment ſhall be examined before the Lord Keeper, or Warden of the Cinque Ports, at the Court of *Shepway*; and if it be falſe it ſhall be reverſed, and the mayor and jurats who gave the judgment be fined, and the mayor put out of his office. Yet ſee the Book of *Diverſity of Courts*, that a writ of error lies there, fol. 2. [at the end of *Horne's Mirror* edit. 1768, fol. (288.)] And *Brooke* agrees; and this cited in title *Cinque Ports*, [pl. 25.]

Error does not lie in *B. R.* or *C. B.* from the Cinque Ports; but a falſe judgment there is reverſible by the Lord Warden in the Court of *Shepway*. 1. Rol. Ab. 745. R. 107. 30. H. 6. 6. b. Cinque ports 26.

2. Inſt. 557. 4. Inſt. 224. 1. Keble 835. 3. Bl. Com 79, 80. Wood's Inſt. 513.

6. H. 4. 8. 9. 34. H. 6. 42.

† Orig. *nunc*.

[376. b.]

*(24) NOTE, by the opinion of the Court, that the Juſtices of *niſi prius* have ſufficient warrant by the act of 33. *H.* 8. [35. *H.* 8. c. 6.] to grant a *tales de circumſtantibus* directed to the coroners for favor or affection

The Juſtices of *Niſi Prius* may direct a *tales de circumſtantibus* to the coroners. 10. Co. 103. Raſt. Jurors 17. 36. H. 8. 6.

tion of the ſheriff, by the words, " that he or they to " whom the return of the *tales* ſhall appertain, may make " return" &c.

Windham *againſt* Windham.

One having bought a *meſſuage in D. of T. C.* makes a feoffment by deed of his *meſſuage late of R. C. in D* this miſtake does not vitiate the conveyance.
1. And. 58. S. C. 3. Co. 10. 2. Co. 33. 1. Co. 88. 4. Co. 35. Hob. 171, 169. Dy. 80. 292. Bacon fo. 16. ca. 24. ante 50. pl. 6. 2. E. 4. 27. b. 28 9. H 6. 12. 20. Aſſ. 8. 26. Aſſ. 38. 9. H. 6. 53. 3. Leon. 137. 3. Cro. 603. Gouldſb. 23. Cro. Car. 473. 1. Keb. 591. [Shep. Touch. 246, 247. Com. dig. Faits (E. 4.) Bac. Ab. Grants (H.) 2. Mod. 3.]

(25) A MAN having lately purchaſed a houſe in *D.* of *Thomas Cotton*, and having no other houſe in *D.* but that only, made a deed of feoffment thereof, by theſe words, *s. the meſſuage lately of Richard Cotton in D.* (which is falſe, there being no ſuch *Richard Cotton* owner thereof, but *T. Cotton*), with a letter of attorney to make livery, as if he was perſonally preſent, which was done accordingly; and all this matter found by ſpecial verdict at the aſſizes at *Norfolk*. And holden by the opinion of the Court that the feoffment is good enough, notwithſtanding the falſe demonſtration of *R.* for *T. Cotton*: for if the name of *R.* or *T.* had been omitted, and a ſpace left for the chriſtian name of *Cotton*, that would have been good, wherefore &c. And ſo the name and ſirname of *T.* or *R. Cotton* are idle and not neceſſary; but the word *meſſuage, with the appurtenances in D.* is ſufficient in this caſe.

If tenant in tail ſuffer a recovery and die before execution, it may be ſued out againſt the heir in tail.
Coke 94. a. 10. 38. a. 1. Co 106. 3. Co. 3. 29. E. 3. 26. Co. Lit. 361. b Plow. 14. b. 29. H. 8. 35. a. 8. H. 4. 12. b. 3. Co. 33. 1. Co. 88. 3. Keble 699. [Supra 35. pl. 28. 374. a. pl. 15. and . ruiſe on Recoveries 135, 200.]

(26) TENANT in tail ſuffered a common recovery with the common voucher to certain uſes compriſed in an indenture, and died ſeiſed before execution: and the heir in tail entered. Whether the recoveror may enter, or have a *ſcire facias* &c? And in the next Term, in an aſſembling of ALL the JUSTICES of both Benches, and MANWOOD and SHUTE Barons of the Exchequer, (except myſelf, and PERIAM,) it was reſolved, That the recovery is executory for the recoverors againſt the heir in tail, by reaſon of the recovery in value. And this alſo appears in *Manxel*'s caſe to be the opinion of MOUNTAGUE and other Juſtices in the ſtar-chamber, in *Plowden*'s Commentaries, *folio ultimo*.

(26) Mich. 29. E. [3.] 23. 48. E. 3. 20 *Mich.* 3. Jac. *B. R.* PER CURIAM, where one hath judgment to recover, if his entry be lawful, he may enter without *ſcire facias* and without ſuing out execution. [ante 35. a. pl. 28.]

Trinity

Trinity Term, [376. b.]

23 Queen Elizabeth.

(27) A MAN ſeiſed of a reverſion dependant upon an eſtate for a term of years, determinable with the life of the leſſee, granted the reverſion to one, *habendum & tenendum* that reverſion for the term of his life, by theſe words; *ſ.* when by death, ſurrender, forfeiture, or otherwiſe *acciderit*, rendering thereout annually *cum reverſio prædicta ut præſcribitur accideret* 20*s.* The leſſee attorned, the rent-arrear, the termor died, the grantee entered, and for the rent-arrear in the life of the termor * the grantor diſtrained, and made avowry; upon which caſe the parties demurred. And in the next Term, without any argument, it was reſolved clearly by all the Juſtices, That no rent ſhould be paid during the life of the termor for the reſervation, which is to be intended the moſt ſtrongly againſt the reſervor: and this, *cum reverſio accideret*, ſhall be expounded *when poſſeſſion ſhall accrue to the reverſion*; before which time the grantee of the reverſion hath not any profit of the land for his rent &c.

A reverſion is granted for life paying annually *cum acciderit* twenty ſhillings. This ſhall be intended when it comes into poſſeſſion. 10. Co. 107. 2. Co. 63, a. Dy. 226 pl. 47. 8, 9. 49. Eliz. pl. 11. c. 3. Cro. 323. R. 112. 2. Mar. 118. a. 10. E. 4. 4. 9. Eliz. 261. b. 37. H. 8. Br. Attornement 41. 31. H. 8 46. b.

* [377. a.]

5. Co. 2. 17. E. 2. Execut. 112. Plow. 196. 198. a. Co. Lit 47. a. R. 438. 2 Brn. 310. [2. Saund. 166. 2 Black. 1230. ante 371. b. pl. 5.]

(27) *Mich.* 25 & 26 *Eliz. C. B.* A leaſe was made to three for their lives, and afterwards the leſſor, reciting this leaſe, grants to another a leaſe for forty years, to commence after the ſurrender, forfeiture, or death of the leſſees for life, or of either of them; and afterwards one of them dies; and it was moved, at what time the leaſe ſhould commence; and agreed by the Judges, That this grantee ſhall have election, whether he will that his term commence after the death of the one leſſee, and make the others attorn to him, and then he ſhall have the rent reſerved; or he may elect to have his term commence after the death of all, and then he ſhall have forty years afterwards: but if he make his election as above, then it may run out before the lives of the two tenants for life. [ante 312. pl. 89.]

(28) SCIRE *Facias* brought upon a judgment in a writ of annuity, granted for term of life to the plaintiff

After judgment in annuity for exerciſing a ſtewardſhip, a *ſci. fa.* is

Tenant in common grants an annuity for holding courts, and he ſummons it without his companion; the grantee refuſes, it is no forfeiture, becauſe a void ſummons. 27. El † *Hur ſion*'s caſe

brought for further arrears, it is a good plea that pending the writ the plaintiff refuſed to hold a court.

34. H. 6. 20. b. 9. Co. 50. 9. E. 4. 50. 39. H. 6. 32. 14 H. 7. 13. 37. H. 6. 38. 44. E. 3. 18. 35. H. 8. 55. 29. Aſſ. 59. 40. E. 3. 24. 17. Aſſ. 10. 1. E. 3. 3. a. 7. H. 4 16. 9. H. 5. 12. 35. H. 8 55. [Salk. 600. 4. Bac. Ab 423.]

In *ſci. fa* on a judgment in annuity for arrears, plaintiff ſhall have execution for thoſe incurred pending the writ.

[1. Rol. Ab. 229. l. 37. 900. l. 5.]

for exerciſing the office of ſteward, for arrearages of one year, incurred ſince the judgment. The defendant pleaded to the action of the writ, † 1. That pending the plea, the plaintiff being requeſted to hold a Court &c. had refuſed: and this, without anſwering to the arrearages incurred before the writ of *ſcire facias*: and yet holden by all the Juſtices and clerks a good plea, as in writ of annuity, 15. *H.* 7. [1, b. pl. 1.]

And by precedents cited by LOWE in the time of *H.* 8. in a like *ſci, fa*, where the annuity hath continuance, the plaintiff ſhall have execution for arrears incurred, as well pending the writ as before. See 11. *H.* 4. [34. pl, 65.] for a like matter,

† Orig. *fur*.

Vernon's Caſe.

An office is traverſed, and the heir coming of age tenders a ſpecial livery. The Queen may compel him to ſue a general livery, and if the traverſe be found for her, the heir to proceed with his livery

Co. Lit. 77. a.

Stamf. 80. 2. Inſt. 693. 2. H. 7. 28.

Raſt Ward, 25. Dy. 169, 366, 313. b.

[The conſequences of theſe tenures aboliſhed with them by ſtat 12. Car. 2. c. 24.]

(29) IT was found by an *inquiſitio poſt mortem* of Lord *Powes*, in the county of *Salop*, that he died ſeiſed of land holden *in capite*, and that *Vernon* was his couſin and heir, and within age. And *E. Gray*, the baſtard ſon of Lord *P.* tendered a traverſe to the dying ſeiſed, and that *Vernon* is not heir, but *A. B.*, and had the land in farm. *Vernon* now being of full age, tendered a ſpecial livery, the land being of the value of one hundred pounds. *Quære* Whether the Queen, *ex debito juſtitiæ*, ought to grant a ſpecial livery, or has the election to drive him to a general livery or not, notwithſtanding the ſtatute of 33. *H.* 8. [c. 22.] Alſo, Whether the livery ſhall be ſtayed until the traverſe be found, or not? And by the opinion of the Counſel of the Court aforeſaid, the Queen hath election &c. And that by diſcretion, if the traverſe be not found for *E. Gray* at the next aſſiſes, *Vernon* to proceed afterwards with his livery.

Powle's Caſe.

(30) *POWLE*, Clerk of the Crown in the Chancery, and his wife as executrix of *E.* her firſt huſband, were ſued in the Bench for debt, and had a writ of privilege of the Chancery for himſelf and his wife; and it was not allowed, becauſe the wife is not impleadable there, nor her attendance requiſite by the cuſtom. But where the huſband alone is impleadable in the Bench, and he and his wife coming towards the Court to defend that ſuit, are arreſted, both ſhall have privilege by 27. *H.* 8. [26. a.] Note the diverſity.

A wife executrix ſued with her huſband in *C. B.* and though he was clerk of the crown in the chancery, privilege diſallowed. Godb 10. S. C. 35. H. 6. 4. 34. H. 6. 35. 27. H. 8. 2. Hob. 177. 22. H. 6. 38 a. 14. H. 4. 21, 22. 34. H. 6. 29. b 22. H. 6. 51. 56. R. 614. Noy 68. 1. Brn. 37. Tothil proceed. Ch. 24. [4. Bac. Ab 222, 223. 1. Com. dig. 452.

Com. dig. Privilege (A. 1.) 2. Black. 1113. 2. Hen. Bl. 636. 4. Term Rep. 377.]

(30) An action of treſpaſs was brought againſt *Bacon*, being an officer of the Chancery, and three others. *Bacon* tendered his privilege, and it was diſallowed, becauſe the others are joined with him, and they are not impleadable there. *Hil.* † 42. *El. C. B.* And GLANVIL ſaid, That privilege ſhall not be allowed to a ſervant, if he be not a neceſſary ſervant in the Chancery. [1. Com. dig 452. 2. Wils. 231.] *Hil* 40. *Eliz. C. B.* A woman † *obligor* is married to an infant, who in debt againſt them prayed his age, and was denied, *per Curiam. Nat.* † 7. *E.* 3. 27. b. [See 2. Br. Ch. Caſ. 545.]

† Orig. *obligee.*

* Michaelmas Term, *[377. b.]

23 & 24 Queen Elizabeth.

Adjourned *ad Menſem Michaelis.*

(31) UPON the iſſue, Whether the church was void by the death &c. *in quare impedit*, the caſe was

If a man having one benefice accepts another, and is inducted therein,

(31) *Trin.* 48. *El. B. R. Baker* v. *Brent* [Cro. *Eliz.* 679. 6. Co. 29.] Judgment, that the church is void, *ipſo facto*, for not reading the articles without deprivation. [See 13. & 14. Car. 2. c. 4. § 6. and 23. *Geo.* 2. c. 28.]

thus:

but does not read the articles, the firſt is not void, for the ſecond is as not taken.

Hob. 168. 2. And. 183. Spirit.' Laws.

4. Raſt. reſidence 2. Dy. 130. 291, 293. a. F. Nat 34. 5. Co. 102. b. Void by 13 Eliz

1. Cro. 357. [Vaugh. 133.]

thus: A man had a † *competent* benefice, and without ſufficient diſpenſation took another † *incompatible* benefice in the 16th year of the preſent Queen, but did not ſubſcribe to the articles of religion according to the ſtatute of the 13th of the now Queen [c. 12.], and yet he was admitted, and inſtituted, and inducted to the ſecond benefice. *Quære* upon the evidence, Whether this makes the firſt benefice void *ipſo facto*, by the ſtatute of 21. *H.* 8. [c. 13.] or not? And the caſe, by conſent of the counſel of the parties, was found by ſpecial verdict. And by the opinion of the Court, holden, That the firſt benefice was void by the death, and not by reaſon of the taking of the ſecond benefice, becauſe he was never legal parſon of that by force of the ſtatute of the 13th of the preſent Queen.

† In orig. in both theſe places the word is *competible*.

F I N I S.

THE

NEW TABLE

OF

PRINCIPAL MATTERS

CONTAINED IN THESE

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ceſſary ſhall have proceſs for his damages, 120. pl. 10

Upon a nonſuit in appeal againſt principal and acceſſary, defendant being afterwards indicted and acquitted, and damages aſſeſſed each time, the acceſſary ſhall have his proceſs upon the laſt only, 120. pl. 10

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An alien living in *France* may bring a perſonal action in our courts in time of peace; *ſecus* in time of war, 2. pl. 8.

An alien friend may be indicted for high treaſon againſt the duty of his allegiance, and ſhall not have a jury *de medietate*, 144. pl. 59

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The plaintiff in a writ of entry *sur disseisin* in the nature of assise, having declared on a seisin in fee, it was amended to a seisin in freehold, which well supports his estate-tail, 190. pl. 72

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The omission of a warrant of attorney may be amended by entry on the roll after error brought, but the attornies shall forfeit each rol. by stat. 18. El. c. 14 though the issue be on *nul tiel record*, so not to be tried by a jury, for it is still an issue, 180. pl. 48

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ANCIENT DEMESNE.

A fine levied at common law of lands in ancient demesne of the nature of gavelkind does not alter the course of inheritance, 72. pl. 4

If tenant sued in ancient demesne in nature of a writ of right put himself upon the grand assise, the record shall not be removed, but he shall have a jury in the nature of the grand assise, 111. pl. 47

Writ of false judgment from ancient demesne under your seal and the seal of four lawful men &c. omitting *et aliud breve* in the conclusion, 164. pl. 58

In false judgment on a writ of right in ancient demesne, *non fum informatus* being pleaded, the Court reversed the judgment for these errors: 1. That in the stile of the Court no mention is made before what Judges: 2. No officer is named in the award or return of the summons: 3. No day prefixed to the tenant in the same summons, but *ad proximum Curiam*: 4. Tenant within age made attorney: 5. No warrant of attorney entered for plaintiff: 6. No names of summoners returned: 7. Tenant within age and in by descent ousted of age: 8. That the court below refused to receive a demurrer, 262. pl. 32

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And if the judgment be reversed in C. B. the court shall only adjudge, that the plaintiff be restored to his action below, *ibid.*

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ANNUITY.

Attainder and imprisonment of the grantee of an annuity *pro consilio impendendo* (charged on lands), so that the grantor could not go to him for advice, is not a good bar to an avowry for arrears, 1 b. pl. 1

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It cannot be entailed, as not within the statute *de Donis*, though it may be granted in fee, 140. pl. 39

Whether an annuity for life out of a manor granted *pro consilio impenso et impendendo* by a bishop, confirmed by the dean and chapter, be void against his successors, and whether debt or annuity lies against the executors for arrears accrued in the life-time of the bishop, 370. pl. 62

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See DEBT, ELECTION, SCIRE FACIAS.

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Where poiſoning was made treaſon, and afterwards a general pardon paſſed, no appeal of murder lies, 50. pl. 4

Of three brothers, if the ſecond be murdered, and the eldeſt die within the year, not having brought any appeal, whether the youngeſt may have it, 69 pl. 31

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In appeal of death the defendant may join iſſue by battel, and ſo where two are appealed, one may, though the other plead to the country, 120. pl. 10

Where defendant in appeal is acquitted, the juſtices of *niſi prius* have power to enquire of the damages, and whether the plaintiff be ſufficient, and if not who are his abettors, 120. pl. 10

Defendant in appeal having tendered his battel, and being diſcharged by demurrer in law, ſhall yet be arraigned at the ſuit of the King, 120. pl 10

Principal and acceſſary being convicted on an indictment of murder, and the acceſſary pardoned, whether appeal lies againſt him for the ſame murder, no principal being named in the appeal, or alive, 133. pl. 4

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See COUNTY, PARDON, VISITOR.

APPORTIONMENT.

See RENT.

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Land cannot ſtrictly be *appurtenant* to a meſſuage, but ſuch word may be conſtrued to paſs the land by the intention of the parties, 130. pl. 69

ARREST.

See EXECUTION.

ARREST OF JUDGMENT.

Three were jointly and ſeverally bound: in debt againſt two, on oyer the condition, but not the bond, was ſet out *in hæc verba*; on *non eſt factum* plaintiff had a verdict, and the Court would not arreſt the judgment, as the entry on the roll did not ſhew that there were three obligees, 310. pl. 80

ASSETS.

Whether lands given in fee to the uſe of the heirs of the body of the donor be aſſets by deſcent in fee ſimple in the hands of his ſon and heir after the ſtatute of Uſes, 111. pl. 46

Land deviſed by *A.* to his wife till his ſon ſhould be of age, then to him in fee, reſerving a third to the wife for life, and if the ſon died within age, to the wife for life, remainder over if the ſon left no iſſue, is aſſets in the hands of the heir, the wife dying after he came of age, 124. pl. 38

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In aſſiſe, the jurors may give poſſeſſion of their own knowledge without a view, 61. pl 33

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Plaint of a *certain portion of tithes* is good and ſufficiently certain, 84. pl. 83

Aſſiſe of tithes *in demeſne* is good, 85. pl 89

In aſſiſe for a portion of tithes, demandant preſcribes in the prior of *S.* this is not a double title, 85. pl. 90

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Dean and chapter bringing aſſiſe for tithes need not mention the dean by name, 86. pl. 96

In aſſiſe for tithes, plaint that *King Henry* 8. *gave them by the name of thoſe tithes ariſing out of the demeſne lands of the Archbiſhop of T. and lately in the tenure of T.* it is not neceſſary to aver, that the lands put in view were the *demeſne lands of the Archbiſhop in the tenure of T.* 87 pl. 99

A termor

A termor cannot plead *aſſiſa non*, but ſhould juſtify under his leaſe, concluding that ſo he is in *ſans tort*, or plead no tenant of the freehold named in the aſſiſe, if the fact warrant it, 207. pl. 13

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In aſſiſe, the tenant may plead a leaſe for years by a ſtranger, and ſo *eins ſans tort*, without giving colour to the plaintiff, 246. pl. 71

None but tenant to the freehold can plead in bar, 207. pl. 13. 246. pl. 71

In aſſiſe for three tenements againſt four, of three of them each claims one, and the fourth claims tenancy of the whole *ſans ceo*, the plaintiff is driven to elect his tenant at his peril, 244 pl. 59

In aſſiſe, if outlawry be pleaded in diſability and defendant fail of the record, he ſhall be held a diſſeiſor without taking the aſſiſe, 187. pl. 8

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If leſſee for years be ouſted, the leſſor may have aſſiſe, but no damages, or he may enter within a year, and if ouſted again, ſhall have aſſiſe, and damages, 355. pl. 35

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And when afterwards taken in the proper county no re-ſummons of the recognitors is neceſſary, 375. pl. 19

See ABRIDGMENT, JURORS, NUISANCE, VERDICT.

ASSUMPSIT.

See MASTER AND SERVANT.

ATTAINDER.

A man having two ſons, the eldeſt is attainted and dies without iſſue in the life time of his father, the youngeſt ſhall inherit his land; but if the eldeſt had left iſſue, the land would have eſcheated, 48. pl. 16

Tenant in tail makes a leaſe, and then is attainted during the life of the iſſue, whether the King having the reverſion may avoid it, 107. pl. 26

The *Archbiſhop of C.* having franchiſe of the chattels of felons *de ſe* within his manor commits treaſon; afterwards the King grants all the chattels of felons *de ſe* in the kingdom to *A. B.* and then the archbiſhop is attainted; whether *A. B* ſhall have a leaſe forfeited by a ſubſequent ſuicide within the manor, 107. pl. 28

Tenant for life, remainder in tail to his ſon and his wife that ſhall be, after the ſon's marriage levied a fine to the King with warranty; after attainder of the ſon, who had iſſue, the King granted the eſtate to a ſtranger, and afterwards reſtored the wife; Whether the iſſue ſhall inherit after her death, Whether ſhe has a right to the whole or to a moiety only, and Whether ſhe may enter on the patentee without ſuit to the king, 122. pl. 21

Lands veſted in the King by an act of attainder may be granted by him before office found, notwithſtanding ſtat. 18. H. 6. c. 6. 145. pl. 66

A. hath cauſe of petition to the King for lands; his brother *B.* hath iſſue a ſon, and is executed for treaſon; *A.* dies without iſſue, and *B.*'s ſon is reſtored by parliament in blood only as to his father, but with leave to ſue for lands of collateral anceſtors as if there had been no attainder, provided that it extend not to land in the King's hands by attainder, he may have a petition of right for thoſe lands as his uncle might, 274. pl. 40

See CONFIRMATION, FORFEITURE.

ATTAINT.

In attaint, plaintiff cannot give any other evidence than was given on the former trial, though defendant may, and the jury muſt find accordingly, if the evidence given to the firſt jury be ſufficiently ſtrong to ſupport their verdict, though they know that verdict to be falſe, 53. pl. 15. 129. pl. 65. 212. pl. 34

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See BAIL, CONUSANCE OF PLEAS.

ATTORNEY.

See WARRANT OF ATTORNEY.

ATTORNMENT.

A letter from the tenant to the grantee of the land who had requeſted him to attorn, ſaying, "I am glad of ſo good "an heir as your ladyſhip," is a valid attornment, 298 pl. 27

An office finds *A.* the youngeſt ſon of *B.* co heir with others, this will not give him right as heir, nor will ſuing out livery with them, holding courts, and receiving rents by the hands of their common bailiff give him any poſſeſſion by *tort* on which a releaſe and grant without livery may enure; and after ſuch releaſe, continuance of the tenants to pay the rents to the ſame bailiff without notice of the grant, is no attornment to him, 302. pl. 43

B. a termor underlets to *A.* who lets to *C.*—*A.* having granted all his intereſt to *B. C.* refuſes to attorn, or pay any rent, 307. pl. 70

See FINE, LEASE.

AUDITA QUERELA.

The feoffee of the conuſor of a ſtatute-merchant may have *audita querela* againſt the conuſee taking out execution where the mayor before whom it was acknowledged is ſuppoſed not to have authority to take it, 35. pl. 27

An acquittance in theſe words, "*Received* 10*l. in part payment of a more "ſum wherein defendant was con-"demned by a judgment given by juſtices "at niſi prius,*" is not a good releaſe to found an *audita querela*, ſhould plaintiff ſue out execution for the whole; for it is not true, judgment being always given *in banc*, 50. pl. 6

In *audita querelâ* the plaintiff ſhall not have coſts or damages, though aſſeſſed by the jury, but he may releaſe them, 194. pl. 32.

Where the defendant is in execution at the ſuit of an executor, if the will be annulled in the ſpiritual court, whether an *audita querela* will lie, 203. pl. 75

On an *exigent* after judgment, the defendant cannot appear *gratis* and plead a releaſe from all executions, but muſt bring *audita querela; ſecus* before judgment, 285. pl. 41

The conuſor of a ſtatute enfeoffed *A. B.* and *C.* ſeverally of his lands; execution is ſued againſt *A.* alone; in *audita querela* to have *B.* contributory, he cannot plead to the *ſcire facias*, that *C.* has been likewiſe omitted, but muſt ſue his *audita querela*, 332. pl. 23

Audita querela upon a ſtatute merchant ſhall be directed to the juſtices of C. B. but on a ſtatute ſtaple it ſhall be to the chancellor, 332. pl. 24

In *audita querela* on a defeaſance to a ſtatute for performance of covenants in an indenture, the declaration ſhould ſet out the covenants, and ſhew performance ſpecially, 297. pl. 25

See INFANT, JOINDER IN ACTION.

AWARD.

A. and *B.* ſubmit dilapidations and all actions &c. *ita quod* the ſame award be delivered &c.; the award made recites the arbitrator elected between *A.* in the name and for the behalf of *C.* and *B.* and orders only that *B.* ſhall repair, but refuſes to decide on any other action; this is good as far as relates to proper parties; but as the ſubmiſſion was conditional, and the award not of all the matters ſubmitted, it is void for the whole, 216. pl. 57

Two and two ſubmit to abide an award, *ita quod* it be delivered to the parties, or to one of them. Delivery to any one of either party, and by parol only, is ſufficient, 218. pl. 5

Submiſſion

Submiſſion to arbitration of all property and intereſt in *K.* and ſuits concerning the ſame, *ita quod &c.* an award only of brakes in *K.* is bad: 1ſt, Becauſe the ſubmiſſion being conditional, the award muſt take in every thing ſubmitted: 2d, The property is not awarded, but only a profit out of the land: 3d, Although they intended to award the place itſelf they have not named it, and then no averment in the pleading may declare the intent, 242. pl. 51

Submiſſion, *ita quod* it be *yielded* at or before the 23d, count, that the arbitrator by his award *deliberat.*' before the 23d, did award &c. is ill, for it ſhould be averred expreſsly that he *yielded it*, and that in the disjunctive words of the condition *at or before* and not *before* only, 243. pl. 56

B.

BAIL.

The defendant muſt appear to ſave his bail below, notwithſtanding a *ſuperſedeas*, 25. pl. 157

A man convicted of felony is not bailable, 179. pl. 42

The writ of mainprize lies to C. B. for a priſoner in execution in the *Fleet* ſuing an attaint, as well as to B. R.; and the recognizance is taken both to the king and the party, 193. pl. 29

So is the recognizance of one in execution for the penalties of a *qui tam* information in B. R. who ſues attaint in C. B. and is in the copulative, to render the body *and* ſatisfy the debt, 364. pl. 39

BAILMENT.

If a man bail money to another to the uſe of a third, to be delivered on the day of marriage, he may countermand it at any time before delivery over, 49. pl. 7

BARGAIN AND SALE.

Bargain and ſale for a valuable conſideration to *A. habendum* to the uſe of the bargainor for life, remainder to the uſe of *A.* in tail, remainder to the right heirs of the bargainor; the *habendum* is void, and *A.* ſhall have the land in fee, 155. pl. 20

The time for inrollment of deeds of bargain and ſale under 27. H. 8. c. 16. is excluſive of the day of the date, and any inſtant of the laſt day of ſix lunar months ſhall be ſaid *infra ſex menſes*, 218. pl. 6

If it is not inconſiſtent with the deed of bargain and ſale, another conſideration may be averred which is not in the deed, 147. pl. 73

BARON AND FEME.

In caſe of a divorce, the wife ſhall have back any goods given by her father in marriage with her that are undiſpoſed of, 13. pl. 61

A woman being poſſeſſed of a leaſe as executrix of her huſband marries *B.* who ſubmits the intereſt and title to arbitration, and a moiety only is awarded to her, whether this binds the wife, 183. pl. 57

An intereſt which a feme has as a term (as a copyhold till her ſon ſhall be of age), veſts in the huſband by her death, if there be no cuſtom to the contrary; *ſecus* where her intereſt is as guardian or *prochein amy* only, 251. pl. 90

The wife is barred by a fine with proclamations levied of her lands by the huſband alone, if ſhe ſuffer five years to paſs after his death without action or entry, 72. pl. 3

Where baron and feme are joint purchaſers in tail, remainder to the *feme* in fee, after his death ſhe may avoid a fine levied of the land by him alone in his life time 162. pl. 48

A feoffment by *A.* before the marriage of his ſon to the uſe of the intended wife for life, though not expreſſed to be for her jointure, yet is ſo within 27. H. 8. c. 10. 228. pl. 46

The wife buys ſilks for apparel, the huſband pays for the making up, but refuſes to pay for the ſilk, this is not ſufficient aſſent to charge him for them, 254. pl. 17

Baron outlawed and feme waived; ſhe comes in ward, and brings a charter of pardon, ſhe ſhall be diſcharged of the impriſonment, but her pardon cannot be allowed without her huſband, 271. pl. 27

A. and

A. and his wife ſeiſed to them and the heirs of *A.* in *London*, ſuffer a recovery there according to the cuſtom, to the uſe of the recoverors till they make a leaſe, and afterwards that they ſhall ſtand ſeiſed to the uſe of *A.* and his wife and the heirs of the wife; this is a good leaſe when executed, and ſhall bind the wife after the death of her huſband, 290. pl. 61

Rent being due to a woman ſhe marries, the huſband gives an acquittance for rent due at a later day, this is a bar for all the arrears, 271. pl. 26

The ſecond huſband with the wife levies a fine in fee of her firſt jointure, whether after his death ſhe may enter againſt her fine, 362. pl. 16

If huſband and wife jointly purchaſe by exchange of the wife's land to them in tail, remainder to the wife in fee; a fine levied by her of this land after his death, is not void under 11. H. 7. c. 20. as a conveyance of his inheritance, 162. note (*a*).

See FORMEDON, JOINDER IN ACTION, VOUCHER, WALES.

BASTARD.

A baſtard born of Engliſh parents beyond ſea, but under the dominions of the crown, is a liege ſubject of *England*, 224. pl. 28

A baſtard is not a child within the meaning of 32. H. 8. c. 1. §. 4.—297. pl. 23. 313. pl. 93. 345. pl. 4.

See CONSIDERATION, JOINTENANT.

BOND.

A bond is not goods, or chattels, within 21. H. 8. c. 7. 5. pl. 2

A bond if ſealed is good, though it want the formal words, *ſealed with my ſeal*, or *in witneſs whereof*, 19. pl. 113

In a bond by three, *we bind ourſelves et utrumque noſtrum* makes a ſeveral bond, 19. pl. 114

Whether the bond required by *Weſt.* 1. c. 20. does not extend to all parks, and Whether it muſt be made to the King or the plaintiff, 238. pl. 34

If a bond be made to a dean *to pay to the ſaid dean and his ſucceſſors*, Whether, upon his death, his ſucceſſors or executors ſhall have debt upon it, 48. pl. 15

If the obligee of a bond by his own act occaſion the forfeiture, it cancels the bond, 30. pl. 205

If tenant in tail bound before 32. H. 8. c. 28. not to make over his eſtate for a longer term than his own life, after the ſtatute make a leaſe under it, the bond is forfeited, but the leaſe is good, 48. pl. 5

Where a man binds himſelf by a wrong name, the action ſhould be againſt him as named in the bond, *alias dictus* his right name, 279. pl. 9

To an action on a bond, it is no plea that it was delivered in the name of an acquittance to the defendant, and ſo *non eſt factum*; re-delivery is no acquittance, 51. pl. 12

B. gives a bond to *A.* conditioned to releaſe one from *A.* to him, as the counſel of *A.* ſhould adviſe; he adviſed a releaſe *of all demands againſt A. and one W. a ſtranger*; this is unreaſonable, and *B.* is not bound to execute it, 218. pl. 3

The condition of a bond being, that "*if* "*J. S. prove not the ſuggeſtion of a bill* "*by the utas of St. Hilary, then if he* "*or his executors pay* 20*l. &c.*" that *J. S.* died before the utas, is a good plea in bar, 262. pl. 30

A bond is *bona notabilia* in the dioceſe where it is at the time of the death of the obligee, 305. pl. 58

Bond by one in execution given to the under-marſhall of the king's bench priſon to ſave him harmleſs from eſcapes, is within 23. H. 6. c. 9. and void, 323. pl. 32

Bond to *A.* and *B.* in 200*l.* to pay them, *ſ.* 100*l.* to *A.* and 100*l.* to *B.*—If *A.* die, whether *B.* ſhall take the whole, pl. 20

The eating of the ſeal by mice after iſſue joined, and before trial, does not vacate the bond, ſo as to ſupport a plea of *non eſt factum*, if the jury find that at the time of plea pleaded it was defendant's deed, 59. pl. 12

The ſheriff on an attachment took a bond that defendant ſhould appear in the ſtar chamber, *and then and there* ſhould anſwer; and holden good within the ſtatute, 364. pl. 29

Bond with double condition, in an action for the non-performance of one, if the verdict

verdict be for the defendant it is a bar to the whole bond, 371. pl. 6

See EVIDENCE, SATISFACTION.

BURGLARY.

See INDICTMENT.

BYE-LAWS.

A bye-law (by the homage of a manor under a cuſtom to make bye-laws) that no tenant put his cattle into the common until the farmer of the rectory ring a bell, is good; and if it order a forfeiture for a breach, *for which the lord ſhall diſtrain*, without ſaying whoſe cattle, it ſhall be intended the cattle of the offender, 321. pl. 23

It is not neceſſary that a breach of the bye-laws ſhould be preſented by the homage, 322. pl. 23

C.

CERTIFICATE.

See CERTIORARI, CHURCH, MARRIAGE.

Whether if a *certiorari* be directed to two clerks of the parliament to certify the tenor of an act, one alone may certify, 93. pl. 23

A *certiorari* to remove an inquiſition taken in the late king's reign, calling it a record of an inquiſition taken &c. *in curia noſtrâ*, is bad, 206. pl. 12

A *certiorari* to juſtices of peace is a *ſuperſedeas* for ever, 244. pl. 63

CESSAVIT.

Whether tenant in *ceſſavit* ſhall be averred pernor of the profits, 26. pl. 166

CHANTRIES.

See SUPERSTITIOUS USES.

CHESTER.

The writ of error to reverſe a fine in *Cheſter* is not ſued out there, but from the chancery at *Weſtminſter*, returnable in B. R. and directed to the Chief Juſtice of *Cheſter*, and not to the Chamberlain, 320. pl. 19. 345. pl. 6

The Court of *Cheſter* may examine the errors upon this writ; but the party aggrieved may have a ſecond writ returnable at once with the proceſſes and records into B. R. which court ſhall examine both judments, 320. pl. 19. 345. pl. 6

The court of *Cheſter* may reform errors in the record or proceſs in the abſence of the defendant, and award reſtitution or a *ſcire facias* againſt him if they pleaſe, 345. pl. 6

But that court cannot examine errors in fact, 345. pl. 6

If they affirm the firſt judgment, all may be removed into B. R. and if found erroneous, they ſhall forfeit one hundred pounds, 345. pl. 6

There muſt be time given for three county courts between the *teſte* and return of the writ, 345. pl. 6

Want of entry of the king's ſilver on the roll at *Cheſter* is not error; an indorſement of it on the writ of covenant is ſufficient, 320. pl. 19

Nor is want of entry of the note of the fine error, 320. pl. 19

Nor, that the concord, though taken out of court, was not ſigned with the hand of the Chief Juſtice there, as is uſual in C. B. 320. pl. 19

CHOSE IN ACTION.

The king's grantee of a *choſe in action* may ſue upon it in his own name, 30. pl. 208

See ANNUITY, CHURCH.

CHURCH.

The church being void, the patron grants the next preſentation when firſt and next it ſhall become void, the grantee ſhall not have the immediate preſentation, but the next enſuing, 26. pl. 165

A church being void, the preſent term ſhall not paſs under a grant of the next avoidance, 129 pl. 66

If the incumbent be promoted to a biſhoprick, the king may not preſent to the void church, 128. pl. 48

A preſent avoidance of a church is a *choſe in action*, and cannot be granted by a ſubject, though it may by the crown, 283. pl. 28

If the king have two titles, as patron of the fee and by lapſe, when the church is void, his grant of the advowſon, without

without expreſs mention of the immediate preſentation, does not paſs that avoidance, 347. pl. 11

The king during the vacancy of an advowſon appendant to his manor, *ex certâ ſcientiâ* grants the manor and all the advowſons appertaining, the immediate preſentation does not paſs thereby, 300. pl. 36

Whether when the patron grants the next advowſon to one, and afterwards grants the next advowſon to another, the ſecond grant is void, 35. pl. 29

The grant of the next avoidance, between the ſtatute of Diſſolutions and the ſurrendering of the abbey in conſequence of it, is void, for the ſaving of that act does not extend to future titles, 231. pl. 1

Grant of the next avoidance to three jointly and ſeverally, one of the three grantees preſents another of them, the biſhop may refuſe him, but if he induct it is good, 304. pl. 54

By a leaſe of all *hereditaments ſituate, lying, and being in T.* the advowſon of the vicarage of *T.* paſſes, 323. pl. 30

The King grants *ex certâ ſcientiâ* a rectory, and all hereditaments parcel of, belonging, or appertaining thereto, in as ample manner, &c. the advowſon of the rectory paſſes, 350. pl. 21

In certifying plenarty, except where the King claims, the biſhop need not ſay that the clerk was inducted, for againſt the ſubject of the church is full by admiſſion and inſtitution, 217. pl. 62

Whether after lapſe to the king, inſtitution and induction by the metropolitan of the patron's preſentee, can prejudice the King, or is the King bound to admit him, 277. pl 55

The biſhop after collating by lapſe and before induction may refuſe to admit the patron's preſentee, 277. pl. 56

The King during the vacancy of the ſee preſents *A.* to a prebend, but before inſtitution repeals his preſentation, yet the dean and chapter inſtall him, and the King ratifies it: on the death of *A.* though the ſee be full, the King may preſent again, for his confirmation was void, 292. pl. 70. So he may repeal before induction, 327. pl. 4

Though the preſentee be a mere layman, ſtill, if inducted, there muſt be a ſentence of nullity before any other preſentation can be made, 292. pl. 1

If the King's preſentee after inſtitution die before induction, whether the King may preſent *de novo*, 347. pl. 11

If the patentee of the King of an advowſon, where the patent was void and the advowſon did not paſs, preſent twice, and his clerk is inducted, he has gained poſſeſſion by this uſurpation even againſt the King, and at the next avoidance, if diſturbed, may maintain aſſiſe of *darrein preſentment*, 350. pl. 21

Pending a *quare impedit* againſt the Queen ſhe preſents again on reſignation, and her clerk is in for ſix months, yet if the plaintiff have judgment in the action he ſhall be removed, 364. pl. 28

Whether a vicarage be void by a certificate of the biſhop ſtating the obſtinate refuſal of the incumbent to pay tenths and firſt-fruits, 116. pl. 69

The *Archbiſhop of Canterbury* grants a diſpenſation to one to hold *in commendam* for three years, notwithſtanding he ſhould be created biſhop. This is good without inrolment in any court, according to 25. H. 8. c. 21. but only in the regiſtry of the archbiſhop; and the church is void by his reſignation within the three years, 233. pl. 12

When a parſon having one benefice of 8l. annual value, though charged at 6l. only in the King's books, is inducted into a ſecond benefice, it vacates the former, 327. pl. 29

A prebendary gives, grants, renders, and confirms to the King *totam ſuam prebendam de C. et terras et poſſeſſiones et omnem auctoritatem, &c. dictæ prebendæ ſpectantem, cui omnia jura, &c ut decet, ſubjicio et ſubmitto.* This is a good reſignation to the King, as ſupreme head of the church, who may accept it, as well as the immediate ordinary, 294. pl. 4

The lands and poſſeſſions of a prebend are annexed by ſtatute to the deanery, but not the prebend itſelf; Whether the dean taking another prebend in the ſame cathedral may be deprived as having two promotions; and Whether the deanery is thereby vacated *ipſo facto*, or only voidable by ſentence, 271. pl. 35

If one having two benefices by diſpenſation obtain a third, the firſt is void, and the

the profits of the third forfeited, but the ſecond remains, 327. pl. 5

The *Archbiſhop of C.'s* chaplain got a diſpenſation to hold a trialty confirmed by the King with a *non obſtante*, he had one benefice before, and now took two others, the firſt is void by 21. H. 8. c. 13. 352. pl. 25

If a man having one benefice accepts another, and is inducted therein, but does not read the Articles, the firſt is not void, for the ſecond is as if it were not taken, 377. pl. 31

Where a church becomes void by the taking of a ſecond benefice, the ordinary is not bound to give notice thereof to the patron, before lapſe can incur, 237. pl. 29. 255. pl. 5

Nor where void for refuſing to pay tenths, 237. pl. 29

If a layman who has been inducted has been deprived by ſentence, the ordinary muſt give notice before lapſe can incur, 293. pl. 3

The King needs not give notice of avoidance by reſignation, 294. pl. 6. Yet ſee *contra*, 347. pl. 12

But the biſhop muſt; and ſo where-ever he is party or privy to the cauſe of the avoidance, 293. pl. 3

Where the king repeals his preſentation, whether he is bound to give notice of it to the ordinary, 292. pl. 70. 327. pl. 6

Notice of the biſhop's refuſal for illiterature affixed to the church-doors is not ſufficient, unleſs the patron reſide in another county, and cannot readily be found, 327. pl 7

If the incumbent be deprived for not ſubſcribing the Articles, the ordinary muſt give perſonal notice to the patron, a notification publicly read in the church, and affixed to the doors there, is not ſufficient, 346. pl. 7

And in the intimation of ſuch deprivation he ſhould be named late incumbent, and ſhewn to be ſuch perſon as is bound to ſubſcribe within the ſtatute, 346. pl 7

If the ordinary do not give the patron notice of deprivation for not reading the Articles, though he by other means know it, no lapſe ſhall incur, 369. pl. 54

The king granting to his leſſee of a rectory an exoneration from all penſions, &c. ſhould find the curate; and ſo muſt a common parſon who makes a leaſe of his parſonage without ſuch clauſe of exoneration, 58. pl. 8

Whether the king or metropolitan ſhall have the preſentation, upon the deprivation of a biſhop, to a church devolved to him by lapſe, 87. pl. 103

By the union of two churches in *A.* they are ſo made, that the patron may bring *quare impedit* by the name of the church in *A.* without diſtinction of the one or the other, 259. pl. 19

If an advowſon appendant and another in groſs be united, it will be appendant for one turn, and in groſs for the other, 259. pl. 19

The deanery of *Wells* is a ſpiritual and not a temporal promotion, 273. pl. 35

A deanery is a ſpiritual corporation within 31. H. 8. c. 13. 280. pl. 12

If a church be void by death, and the ordinary refuſe the preſentee of the patron for illiterature, lapſe is to be reckoned from the day of the death, and not of the notice; *ſecus* if void by reſignation or deprivation, 327. pl. 7

If the *Archbiſhop of Y.* refuſe the preſentee for illiterature, which may be traverſed, it ſhall be tried by the *Archbiſhop of C.* and the writ *de admittendo* (if found for the patron) ſhall be directed to him, 327. pl. 7

The Queen preſents one whom the biſhop refuſes, and pending a ſuit for his admiſſion, another, by fraud in deceit of the Queen, procures a preſentation for himſelf, in which there is no mention of her revoking the firſt preſentation, this is no revocation of it, 339. pl. 47

If a benefice avoid by acceptance of another, no ſubſequent diſpenſation under 28. H. 8. c. 16. can reſtore without a new preſentation, 347. pl. 11

See JOINTENANT, KING.

CINQUE-PORTS.

See ERROR.

CLERGY.

An acceſſary in horſe-ſtealing admitted to his clergy, 99. pl. 59

Though a *non legit ut clericus* be recorded of a convict, yet if after reſpite he be

brought up again, and do then read, he ſhall have his clergy; but the gaoler ſhall be puniſhed for ſuffering him to be inſtructed, 205. pl. 6

COIN.

If a receiver do not pay over to the cofferer on the day on which he ought, and the coin be debaſed afterwards but before he pays, who ſhall bear the loſs, 83. pl. 73

If he offer and the cofferer refuſe, who ſhall bear it, 83. pl. 73

If a receiver having money in his hands refuſe to pay when requeſted, who ſhall bear it, 83 pl 73

See TENDER.

COLLEGE.

The college of *Greyſtocke* having a maſter, but preſentable, ſix prieſts with ſtipends, and though always called a college, having no common ſeal, is not a college within 1. E. 6. c. 14. 81. pl. 64

King Ed. 1. having granted advowſons to the *Biſhop of St. David* to appropriate to his ſaid church of *St. D.* or annex prebends to it, the biſhop, with conſent of the King, erects a college in *L.* one of the advowſons, and appropriates others for prebends annexed to this new erection, and they continue ſo till the time of *Ed.* 6. This foundation, though not purſuing the original grant, is a college within 1. E. 6. c. 14. 267. pl. 12

See VISITOR.

COMMON.

If one who has land in one vill have common with the tenants of an adjoining vill in a field lying between them, he muſt make title *pur cauſe de vicinage*, and not as appendant, 47. pl. 13

Where there is common *pur cauſe de vicinage* between two, and one incloſes, though the other's common is not gone he cannot put his cattle into that land, but they may eſcape thither of themſelves, 316. pl. 4

See EXTINGUISHMENT, MANOR.

CONDITION.

Whether a proviſo in a leaſe, that if the leſſee be diſpoſed to alien the leſſor ſhould have the firſt offer, *paying as much for it as another would*, be a condition, or only a covenant, 13. pl. 65

The words in a leaſe, *and it ſhall not be lawful for the leſſee to alien without licenſe of the leſſor*, make a condition, but the reſtraint continues only during the lives of the leſſee and leſſor, 64. pl. 8

"*And the leſſee ſhall continually dwell upon, &c. under pain of forfeiture,*" is a condition, and if broken the leſſor may re-enter, 79. pl. 46

Deviſe to *A. paying ſuch ſums as he ſhall pleaſe*, is conditional, and ſomething muſt be paid, 74. pl. 16

Leaſe of lands in *B.* by the *Archbiſhop of Y.* rendering rent there; proviſo, that during any vacancy of the ſee the rent ſhould be paid to the chapter *ut in jure ſuo*. This proviſo is not a condition, nor can the rent be paid to the chapter, who have not the reverſion: and *in jure ſuo* is contrary to the King's right to the temporalties *ſede vacante*, 222. pl. 20

A. B. tenant for life ſurrenders land to the King in reverſion *to the intent* that he, his heirs, &c. ſhall give him others in recompenſe; the King aliens them and gives others in recompenſe, from which *A. B.* being evicted by a prior title, enters upon the alienee; adjudged that this is no condition, and that there ought to be a requeſt made to the King, for there is yet time for the King to perform, 138. pl. 29

Leaſe without impeachment of waſte with a condition for re entry in caſe of Waſte, Whether this is repugnant, 47. pl. 11

Bargain and ſale of lands, provided that it ſhall be lawful for the bargainor to retain them for twenty years without interruption, Whether this be a condition, 319. pl. 12

Recognizance conditioned to deliver the keys of a houſe and quiet poſſeſſion to *A.* the keys are delivered, the houſe empty, and the doors locked, but within an hour after another perſon enters by a key he had long kept, this ſeems not a good performance, 219. pl. 9

A. bargains and ſells a maner with an advowſon appendant to *B.* in fee, *habendum* to the uſe of *B.* and his heirs according to an indenture; and it was covenanted to ſuffer a recovery to the uſes of the indenture, rendering rent to

A.

A. and his heirs; and for further ſecurity, that *A.* and *B.* ſhould levy a fine *ſur grant* to *B.* with *render* of the rent to *A. proviſo that B ſhould grant by deed the advowſon to A. for life*, with further covenant that all future eſtates ſhould be to thoſe uſes; the recovery was ſuffered, and a fine levied which varied from the covenant; but holden, 1ſt, That the *proviſo* here was a good condition: 2d, That the fine, notwithſtanding the variance, did not extinguiſh the condition: 3d, That unleſs haſtened by requeſt *B.* and his whole life to make his grant in, but by his death without making it the condition is broken, 311. pl. 83

Condition to make a leaſe before *Michaelmas* for thirty-one years if *A.* will conſent, if not, for twenty one years, the leaſe for twenty-one muſt be made before *Michaelmas*, if *A.* withhold his conſent, 347. pl. 10

A. in conſideration of a marriage between his ſon and the ſiſter of *B.* covenants to convey land to the ſon before *Eaſter* at the coſts of the ſon, and *B* covenants, that if *A.* do, then he will make a general releaſe. Though *A.* was ready, and his ſon did not tender the coſts, he muſt take the conveyance before *B.* needs releaſe, 371. pl 1

Of a condition in a leaſe not to alien to *A* alienation to *B.* who aliens to *A.* is no breach, 45. pl. 1

Leaſe for years, with a clauſe of re-entry *if leſſee during his life ſhould alien his term without aſſent*; Whether a deviſe without aſſent be a forfeiture, 45. pl. 3

If a leaſe be made, proviſo that *the leſſee his executors and aſſigns, do not alien, without licenſe, to any except his wife or child*, the wife or child may not alien without licence, without breach of the condition, 152. pl. 7

A. grants a manor to *B.* in tail, on condition that he or any of his iſſue ſhall not alien or do any act *quo minus* it may revert immediately on failure of iſſue: *B.* marries, this is no breach, or it would be repugnant to the eſtate granted, 342. pl. 55

Nor is his grant of a copyhold to *C.* according to the cuſtom a breach; for though, perhaps, an expreſs condition not to grant a copyhold would reſtrain, yet a general condition like this ſhall not to be taken to comprehend private cuſtoms, 342. pl. 55

Nor attainder of treaſon; for the crown only takes during the lives of the iſſues, and on failure of iſſue it ſhall revert immediately, 344 pl. 59

Commiſſion of treaſon without attainder is no breach of a condition not to alien; but attainder is an indirect alienation, and a breach of it, 344. pl. 59

A. makes a feoffment conditioned, to reinfeoff *him and his wife in tail, remainder to T. my ſon, remainder to S. my daughter*; the feoffees re-infeoff in thoſe very words, the heir may not enter as for a breach, 45. pl. 4

The grantee of a reverſion of every common perſon may enter for conditions broken by the ſtat. 32. H. 8. c. 34. And ſo may the patentees of a reverſion of Ed. 6. and of all other heirs of Hen. 8. 130. pl. 69

Deviſe of lands to *A.* in fee, conditioned to pay 500l. and if he fail of payment, to *B.* and his heirs, with the like condition; the deviſor dies; *A.* does not pay the debt; *B.* dies; the money is demanded of the executors, who refuſe; Whether *B.*'s heirs may enter to perform the condition, 128. pl. 59

On a deviſe of a land by a *ceſtuy que uſe* to his wife *ita quod* ſhe ſhould not waſte, remainder after her death to the younger ſon in tail, Who ſhall enter for the condition broken? And Whether by ſuch entry the remainder be defeated, 117. pl 74.

If land be deviſed by *H.* to his wife for life, on condition that he ſhall educate *B.* their eldeſt ſon, remainder after her deceaſe to the ſecond ſon in tail, *B.* when of age may enter for a breach of the condition, and hold for her life, 126. pl. 57

The bargainee of the whole reverſion is a grantee to take advantage under 32. H. 8. c. 34. of a condition broken. But the bargainee of parcel only is not, 308. pl. 75

Leaſe on condition not to alien the premiſes, or any part, without the aſſent of the leſſor, he licenſes the alienation of part, ſtill he may re enter if the leſſee alien the whole, 334. pl. 32

A. deviſes land to *B.* on condition to pay his wife a rent thereout, and gives her a diſtreſs

a diſtreſs if after demand it is in arrear: the heir may enter if not paid without demand, but the wife muſt demand before ſhe can diſtrain, 348. pl. 13

The condition of a bond being, that if the wife of the obligee die before the Feaſt of *St. John the Baptiſt*, without iſſue of her body *then living*, then &c the words *then living* refer to the time of the Feaſt, and not to her death, 14. pl. 72

The condition of a bond reciting a ſale of lands, and that the obligor *ſhall warrant A. if he ſhould enjoy it* peaceably to him and his heirs, the words *warrant the ſaid A.* without ſaying what, ſhall be intended of the lands ſo ſold, 42. pl. 9

And if *A.* peaceably enjoy during his life, that is ſufficient performance, the warranty only extending to titles *in eſſe* at the time of making it, *ibid.*

Where in a leaſe by indenture it was agreed that any one to whom intereſt in the premiſes ſhould come (not being wife or child of the leſſee) ſhould find ſuch ſurety &c. on pain of forfeiture, the widow of the leſſee's ſon having found ſuch ſurety her ſecond huſband aſſigned to a ſtranger, Whether he is bound to find freſh ſurety, 91. pl. 15

If the reverſion of a leaſe for years be ſevered in any part, the entire condition reſerved upon the leaſe ſhall not be deſtroyed if the ſeverance be by deſcent, eviction, or act of the law; *ſecus* if by act of the party, 309. pl. 75

See CONVEYANCE, REMAINDER, TENDER, WASTE.

CONFIRMATION.

Whether a feoffment made by a biſhop, confirmed by a dean (who was elected in the room of one attainted of treaſon by parliament) and by the chapter, binds the ſucceeding biſhop after the attainder reverſed, he never having been deprived by ſentence, 123. pl. 37

Confirmation of an eſtate muſt be ſhewn to be by deed, 229. pl. 51

Confirmation even of the King cannot make that good which was merely void, 263. pl. 37

See DEPUTY, LEASE.

CONSIDERATION.

The ſervant of *A.* is arreſted, *B.* bails him and afterwards for this friendſhip *A* promiſes to ſave him harmleſs—this is no good conſideration for the *aſſumpſit*; *ſecus* had *A.* requeſted and the bailing been after the promiſe, 272. pl. 31

A. in conſideration that *B.* has married his daughter at his requeſt, promiſes to pay him 20l. this is a good conſideration, 272. pl. 32

That *ceſtuy que uſe* is the heir *ex parte paternâ* is ſufficient conſideration to ſtand ſeiſed to his uſe of land ſo deſcending, 308. pl. 72

Conſideration of natural affection will not raiſe an uſe to a baſtard, 374. p. 17

See BARGAIN AND SALE, JURORS.

CONVEYANCE.

If *A.* levy a fine of land *in capite* to the uſe of himſelf and wife for life, remainder to *H.* their ſon in tail, remainder to himſelf and wife in fee, Whether after her death his ſon by a former wife ſhall have the third part by 32. H. 8. c. 1. or ſhall *H.* have the whole, 113. pl. 54

Tenant by knight ſervice aſſured two parts of his land to his wife before marriage, and having ſold the moiety of the remaining third part died, his heir within age, Whether the lord may take any of the two parts to ſupply his full third, 142. pl. 49

A. being ſeiſed in fee of land in right of his wife, joined with her in a bargain and ſale of it by indenture for thirty years in conſideration of 70l. remainder to themſelves for life, remainder to *B.* their ſon and *C.* his wife in tail, and ſuffered a recovery for further aſſurance. And it was alſo found *dehors* the indenture, that the ſaid aſſurance was as well in conſideration of the marriage of *B.* and *C.* as of the ſaid 70l. and that *A.* and his wife died; then *B.* died leaving iſſue, and afterwards *C.* with a ſecond huſband levied a fine *come ceo*, with warranty to a ſtranger, the iſſue after the term and within the five years may enter under 11. H. 7. c. 20. this being a gift by an anceſtor of the huſband within that ſtatute, 146. pl. 68

A. in consideration of his daughter's marriage, covenants to stand seised to his own use for life, and at his death that she and her husband shall have the land in tail, and that all persons should stand seised to those uses; and also for further assurance. After the marriage he bargains and sells with fine and recovery to one, with full notice of the covenants and use, this is of no force, but on the death of *A.* the daughter and her husband may enter, 235. pl. 20

Conveyance by the king's tenant in chief, in consideration of natural affection, to the collateral relations, is not within 32. H. 8. c. 1. as conveyance to children's children is, 286. pl. 46

Nor is conveyance to a bastard within that statute, 297. pl. 23. 345. pl. 4

A woman seised by descent *ex parte paternâ* intending to marry *B.* by recovery and deed grants to herself and *B.* a fee by mistake; she may correct this after marriage, by a second deed between herself and *B.* and *C.* her heir *ex parte paterni*, *B.* and she covenanting to stand seised in special tail only, with remainder to *C.* as was intended before, 307. pl. 71

H. conveys by *Latin* deed *seniori pubro* of his body, and afterwards levies a fine to the same uses, which is done to the eldest child; *seniori* shall now be construed of either sex, and an elder daughter shall take before a younger son, 337. pl. 36

Before trial and after issue joined in *M.* 12. and 13. *Eliz.* the defendant, to defraud the plaintiff of execution, conveyed his lands to friends, and took the profits himself, and this the sheriff returned to the *elegit*; but on the passing of 13. El. c. 5. a *pluries elegit* was awarded, 294. pl. 8

A man cannot reserve to himself a less estate than he has already, unless he departs with the whole, and retakes the less by way of use, 309 pl. 77

A less estate cannot precede a greater immediately in the same person, unless both are estates of inheritance, but the less may depend upon, and follow the greater, 310. pl. 78

See JOINTENANT, HERIOT.

CONUSANCE OF PLEAS.

Though the *Bishop of Ely* be a party, his bailiff of the isle may claim conusance, 156. pl. 26

23. Hen. 8. c. 3. ousts the conusance of the city of *Norwich* in attaints, being passed after their charter, though that was afterwards confirmed generally by *King Ed.* 6. 202. pl. 70

COPYHOLD.

B. purchases a copyhold for lives of the lord, who makes a lease of the freehold of the soil to *A.* rendering rent, and afterwards levies a fine of the manor to *B.* who accepts rent from *A.* Whether *B.*'s copyhold is gone, 30. pl. 207

A. surrenders copyhold to the intent that the lord shall grant it to him for life, remainder over, and dies before execution thereof had, a grant of the remainder afterwards by the lord, is good, 251. pl. 90

A. covenants to assure all his copyhold lands, and afterwards surrenders divers parcels by names and abutals, the surrender is enrolled accordingly with the addition of *per nomen* of all his copyhold lands there, yet no more shall pass than were named in the surrender, 251. pl. 92

A woman copyholder for life marries; the reversion, after the death, surrender, or forfeiture of the wife, is granted to *A.* *B.* and *C.* successively according to the custom; the husband surrenders to *A.* who is admitted and dies; *B.* dies; *C.* has no right, as the wife may claim after her husband's death; till which time the lord may retain it as occupant. But if they release all her interest to *C.* the lord is bound to receive him, 264. pl. 38

A copyholder dies leaving two daughters by different venters, who enter; the eldest dies before admittance, yet her possession was sufficient to entitle her collateral heir, 291. pl. 69

So possession by guardian, to whom custody is committed by the lord during minority, if the infant die before admittance, will entitle his heir, 292. pl. 69

Copyholders ideots are not within the survey of the court of wards, but of the manor courts only, 302. pl. 46

See BYE-LAWS, MANOR.

CORPORATION.

If the king grant land *to the good men of I.* without an *habendum* "to them their "heirs and successors," rendering a rent, they become a corporation perpetual to this

this ſingle intent; but they are only tenants at will; and if the king releaſe the rent, it is a diſſolution *ipſo facto*, 100. pl. 70

Whether a corporation may enter on the leſſee without attorney warranted under their common ſeal, 102. pl. 83

See SURRENDER, VARIANCE.

COSTS.

Pending a writ of error on a nonſuit in C. B. defendant may ſue for the coſts recovered in the original action, and he ſhall have them though the judgment be reverſed, 32. pl. 5

In an action upon the ſtat. 2. H. 4. c. 11. the plaintiff is entitled to double coſts, 159 pl. 38

No coſts ſhall be had on ſtat. 1. & 2. P. & M. c. 12. although the jury aſſeſs them, 177. pl. 33

In a writ of entry in the *poſt*, upon a diſſeiſin made to the demandant himſelf, he ſhall recover coſts and damages; *ſecus* if the diſſeiſin were made to his anceſtor, 370. pl. 61

See AUDITA QUERELA, QUARE IMPEDIT, REPLEVIN.

COUNTY.

Appeal of robbery againſt acceſſaries abetting in one county a felony committed in another, muſt be ſaid in the county where they did abet, 38. pl. 50

In appeal of murder, where the blow is given in one county, and the death in another, the jury muſt come from the body of both counties, and the trial be in B. R. 46 pl. 8

In treſpaſs, defendant pleads a fiſhery in one county, and preſcribes to draw his nets on plaintiff's ſoil in another, this ſhall be tried by a viſne of both counties, 268 pl. 14

In debt on bond in *London*, iſſue on the poſſeſſion of lands in *Bedford* ſhall be tried in that county, 270. pl. 25

Raviſhment of ward muſt be brought in the county where the wrong was committed; though if the ward be carried into another, *Weſt.* 2. gives a writ to that ſheriff to have the body in court, 298. pl. 58

See DISTRESS, TRESPASS, VERDICT.

COUNTY PALATINE.

See CHESTER, CONUSANCE OF PLEAS.

COURTS.

An action will not lie in the piepowder court on a contract made at a preceding fair, 132. pl. 80

If a ſtatute create a new offence, and give a penalty to be recovered in any of the king's courts of record, it is confined to thoſe at *Weſtminſter*; but if no court be mentioned it may be ſued for any where, 236 pl. 24

See MANOR, PERJURY, SATISFACTION, STRIKING IN COURTS, USAGE.

COVENANTS.

Leſſee by indenture covenants, that if he, his executors or aſſigns alien, the leſſor may enter, and makes his wife executrix and dies, alienation by her ſecond huſband is a breach of the covenant, 6. pl. 1

A covenant to levy a fine to *A.* does not change the eſtate till the fine be levied; otherwiſe if the covenant had been that *A.* ſhould have the eſtate, 96. pl. 40

A covenant that the leſſor ſhall pay quitrents during the term does not extend to his executors, 114. pl. 60

Of a covenant to infeoff at *Eaſter*, free from all former incumbrances (leaſes, &c. excepted), a leaſe made afterwards, but before the feoffment, is no breach, 139 pl. 54

If one covenant to do an act, he alone can perform it, 191. pl. 20

Leaſe for life by indenture, proviſo that if the leſſee ſhould die within ſixty years, his executor ſhall have ſo many years as ſhall be behind at his death, this proviſo is but a covenant and not a leaſe, 150. pl. 83

After dower recovered againſt a termor, he leaſes over, and covenants that he has done no act to impeach, *but that* the aſſignee might quietly enjoy without let of him or of any other perſon; the words *but that* have relation to the covenant, that *he* had done no act, and extends it only to acts done by himſelf, 243. pl. 43

A. is bound to ſuffer his leſſee to enjoy, and that without interruption of himſelf or any other. A copyholder entering by *eigne* title is no breach, unleſs *A.* actually procured the diſturbance, 255. pl. 4

Tenant for life makes a leaſe for years by the words *grant and demiſe*, rendering rent

rent by indenture, and dies within the term, the remainder man enters on the termor, holden that an action will not lie againſt the executors but upon an expreſs covenant, for the covenant in law expired with the term 2d, That plaintiff in ſuch action muſt ſhew himſelf in at the time of the ouſting expreſsly, and not by implication only, 257. pl. 13

Covenant to ſtand ſeiſed to the uſe of my brother is good, without expreſs words of conſideration, 302 pl. 45

Bond by *A.* to perform covenants in an indenture of leaſe, one whereof was, that *A.* ſhould pay rent until he bring an action againſt *B.* the tenant in poſſeſſion, and ſuffer a verdict againſt himſelf. It is not enough that *B.* quietly enjoys; there muſt be ſuch verdict before the rent ſhall ceaſe, 318. pl. 15

Three purchaſe jointly in fee, and covenant each with the other and his heirs that the ſurvivor ſhall make ſuch conveyance to the heirs of the others as they ſhall deviſe, this covenant is peremptory on the ſurvivor, and, though not annexed to the land, goes to the heir, who, on tender of a conveyance and refuſal to execute it, may immediately ſue, either in the county where the lands lie, or where the tender was made. And the time of the original ſale or name of the vendor need not be mentioned in the declaration, 338. pl. 59

The vendee of land covenants to make back ſuch aſſurance as the vendor's counſel ſhould adviſe, proviſo, if he do not, to ſtand ſeiſed to the uſe of the vendor, the vendee is bound to propoſe and require the aſſurance, or the vendee may keep the land, 361. pl. 9

A. covenants that he will not do any act to avoid his benefice in leaſe to *B:* and that *C.* a leſſee of part ſhall pay the rent to *B.*—he may plead performance of all the covenants on his part generally, without expreſs averment that *C.* has paid the rent, 372. pl. 11

See Act of God, Condition, Executor, Landlord and Tenant.

CURTESY OF ENGLAND.

A man ſhall be tenant by the curteſy of *England* if the iſſue be born alive, though it have never been heard to cry, 25. pl. 159

But not by the curteſy of *Scotland*, without its actually having been heard to cry, *ibid. in notis*

The King's ward being married, and having iſſue, after ſhe attained her age tendered livery, but before it fully paſſed died, her huſband ſhall be tenant by the curteſy, 95. pl. 35

Land *in capite* by knight ſervice deſcends to a *feme covert*, who dies without ſuing livery, her huſband ſhall be tenant by the curteſy and ſue it, 229. pl. 49

If a man with his wife alien her land after iſſue, and ſhe die, the iſſue cannot enter during the life of the huſband, 363. pl. 26

CUSTOM.

See London, Preſcription, Wales.

D.

DAMAGES.

In ſlander defendant juſtified, verdict for plaintiff, the Court cannot mitigate the damages. But in mayhem may increaſe them, 105. pl. 15

In an action on the firſt breach of an agreement to deliver ſo much annually during the joint lives of the parties, whether the jury can aſſeſs damages for the whole contract, 113. pl. 55

A judgment by *non ſum informatus* on 8. 11. 6. c. 9. is equal to a conviction, and the defendant ſhall forfeit treble damages; ſo on *nihil dicit* in waſte, 214. pl. 45

Judgment of damages by confeſſion *in plegiis acquietandis*, though it did not appear that plaintiff had paid the creditor, but only that he was impriſoned for the debt, 257. pl. 12

In dower, damages ſhall only be where the huſband died ſeiſed, 284. pl. 33

The damages aſſeſſed under 5. El. c. 14. for a forged releaſe, ſhall be double of the penalty, not of the ſum really due, 304. pl. 51

Damages and coſts ſhall be recovered on a writ of entry in the *poſt* on a diſſeiſin made

made to the demandant himſelf; *ſecus* if made to his anceſtor, 370. pl. 61

See APPEAL, ASSISE, AUDITA QUERELA, ENTRY, JUDGMENTS, QUARE IMPEDIT, REPLEVIN.

DAYS, DATES, AND TIMES.

Leaſe reſerving rent payable at two certain feaſts, or in one month next after either of the ſaid feaſts, and if the rent ſhould be in arrear after either of the ſaid feaſts and days by the ſpace of eight weeks, that then, &c. the eight weeks ſhall be reckoned from the 28th day after the feaſts, 142. pl. 50

The legal quarter of a year conſiſts of ninety-one days, the half of 182, and the whole of 365, the law paying no regard to the odd hours, 345. pl. 5

A releaſe given on 21 *January* ſhall not ſtop the taking of an inqueſt on the 23d by a plea *puis darrein continuance*; for the continuance on which the inqueſt is by relation taken is on the eſſoin day the 20th, 361. pl. 10

See BARGAIN AND SALE, DEED.

DEBT.

Debt will lie againſt the adminiſtrator of one who gave a bill undertaking to lay out money in goods to be ſhipped for the plaintiffs, but who never executed the commiſſion; though if the money had been employed debt would not lie, 20. pl. 118

On the grant of an annuity *et ſi contingat* to be in arrear, diſtreſs for it, and for 6s. 8d. *nomine pœnæ*; as no grant of this penalty is expreſsly in the deed, whether debt will lie for it, 227. pl. 43

If a rent-charge be granted for life, proviſo not to charge the perſon, ſtill debt will lie for arrears by executors after the eſtate is determined, 227. pl. 43

DEBTOR.

One in the *Fleet* procured his indictment for a felony, that by confeſſing it he might have his clergy, and ſo defraud his creditors, and got a *hab. corp. cum cauſâ* into B. R. But the King directed the Judges there to ſurceaſe from proceeding to his arraignment till further order, 245. pl. 65

If the King have his debtor in execution, no ſubject can have execution till the King's debt is ſatisfied, 297. pl. 24

Between verdict and judgment in B. R. defendant confeſſed a debt to the King in the exchequer, and was committed in execution; and afterwards being brought into B. R. by *habeas corpus* was committed to the marſhal in execution on both judgments. The exchequer ſends another writ to have the body by prerogative, Whether it muſt be obeyed, 307. pl. 68

See EXECUTION, PREROGATIVE.

DECEIT.

See PLEADING.

DEDIMUS POTESTATEM.

See FINE.

DEED.

Whether delivery to the obligee himſelf as an eſcrow makes the deed abſolute, 34. pl. 25

A. delivers a deed to *B.* to deliver as his deed to *C.*—*C.* refuſes to receive it, *B.* leaves it, *C.* may ſue upon it, 167. pl. 14

And *A* cannot plead this as a ſpecial *non eſt factum*, for it was his deed by the firſt delivery, 167. pl. 14

A. makes a bond to *B.* for the uſe of *C.* and putting it into *C.*'s hands in preſence of *B.* ſays, *this will ſerve*, it is a good delivery, 192. pl. 26

If a man plead his deed dated 20th *January*, and delivered 30th, he ought to ſay "firſt delivered on the 30th," or it ſhall be taken a perfect deed on the 20th, 221. pl 18

If words are blotted out after execution by the grantee himſelf, though in a place not material, it will make the deed void, 261. pl. 29

A defeazance dated before but delivered after a recognizance is a good bar to it, 315. pl. 100

If *A.* on the 26th make a ſtatute to *B.* and *B.* on the 27th make and deliver a releaſe *up to the making of theſe preſents*, but dates it as on the 25th, ſtill the ſtatute is releaſed; *ſecus* had it been *up to the day of the date*, 307. pl. 67

DEMAND.

Condition that for default of rent paid a term ſhall ceaſe, it is neceſſary to make a demand of the rent upon the land;

land; *fecus* if it be reſerved payable off the land, 51. pl. 18

Leaſe of abbey lands, reſerving an ancient rent to be paid at a place out of the land, with a clauſe of re-entry, the King's reverſioner need not demand the rent, but may enter under 32. H. 8 c. 34, for non-payment; *à fortiori* where the clauſe of re-entry upon ſuch default is, *that he ſhall enter without further demand*, 68. pl 23

Upon rent reſerved by the King payable on demand at a place certain, on pain of forfeiture if not paid within one month, Whether a demand is neceſſary by a grantee of the reverſion, and where, 87. pl. 103

See CONDITION, RENT.

DEPARTURE.

In debt on bond to make if required ſuch aſſurance as counſel ſhould adviſe, plea, *proteſtando* no advice, ſays, that he was not required; replication, advice of a releaſe, and tender of it, and refuſal by the defendant to ſeal it; a rejoinder that he did not refuſe is a departure, 31. pl. 217

Avowry for *damage feaſant* under a leaſe from the fee; plea that the leſſor was only tenant in tail, and a conveyance to plaintiff as heir in tail; replication that the leſſor reſerved a rent upon the leaſe, which the plaintiff hath accepted ſince the leſſor's death, is a departure, 95. pl. 40

Leſſee covenants, and is bound to incloſe after felling wood; to debt on the bond he pleads that he did not fell; replication of two acres felled, and no incloſure; rejoinder that he did incloſe, is a departure and jeopfail, 253. pl. 101

The plaintiff declaring that *he had performed all his covenants*, and in his replication ſhewing only that *he was ready*, is a departure, 371. pl. 2

DEPUTY.

If a dean make a deputy by parol, and he in his abſence, with the chapter, confirm a grant of the biſhop, Whether it ſhall bind the ſucceſſor: *quære* alſo, if it had been by the deputy of ſuch deputy, 145. pl. 95

The dean of the college of *Windſor* may, by the ſtatutes, make a deputy with power *in omnibus exercere officium ſuum in perſonas et collegium memorat.* this power does not enable him to make a leaſe of their land, though the reſt of the college join, and it be under their common ſeal; for the word *collegium* extends only to the ſite of the college, not to their poſſeſſions, 233. pl. 13

See ESCAPE, OFFICE.

DESCENT.

The heir of a remainder-man expectant upon an eſtate-tail, though the anceſtor die before the remainder falls in, is in by deſcent, 136. pl. 17

A. builds a ſhop on a waſte in the King's manor and pays no rent, the King grants the manor to *B.* who neither enters nor takes rent for the ſhop, *A.* dies in poſſeſſion, his ſon enters, this is no deſcent, 266. pl. 10

See ENTRY, HEIR.

DEVISE.

B. deviſes to *A.* his youngeſt ſon and his heirs for ever, and if either of his two ſons ſhould die without iſſue, that then it ſhould remain to his daughter in fee, *A.* dies without iſſue in the life of the teſtator, the daughter ſhall have her remainder, 122. pl 20.

Whether a deviſe of a rent-charge, and that not in writing, be good, 139 pl. 37

A deviſe of lands deviſeable by cuſtom holden *in capite* by knight ſervice is good againſt the heir for the whole—*Quære*, As to the King's wardſhip and *primer ſeiſin*. 155. pl. 21

Deviſe to *F.* and the *heirs male of his body*, and if he chance to die without *heirs of his body* remainder over, gives only an eſtate in ſpecial tail male, 171. pl. 7

Ceſtuy que uſe was not enabled by ſtat. R. 3. to deviſe the land, 74. pl. 14

A deviſe of an entire manor holden by knight ſervice, made meſne between the ſtat of Wills and the ſtat. of Explanations, is good for two parts, and bad for the third, 150. pl. 89

A man having lands in two hamlets within one vill deviſes all his lands in the vill and in one of the hamlets by name—nothing in the other ſhall paſs, 261. pl. 27

Deviſe

Deviſe of a meſſuage by the termor without declaring any eſtate paſſes the whole term, 307. pl. 69

A. enfeoffs *B.* in truſt to perform his will, and by will declares that *B.* ſhall ſtand ſeiſed to the uſe of his daughter *C.*: this is a good deviſe of the land by intention, though *C.* be a baſtard, and though *B.* can by no poſſibility be ſeiſed to her uſe, 323. pl. 29

A. deviſes land to *B.* and her heirs for ever, and other lands to *C.* and her heirs; but if *C.* die before ſixteen living *B.* her part to *B.* and her heirs; and if *B.* die living *C.* her part to *C.* and her heirs; but if both die having no iſſue, then to *D.*; theſe are eſtates-tail and not conditional fees, and *B.* and *C.* do not take croſs-remainders, for no implication will make a croſs remainder where there is a ſpecial limitation by the teſtator himſelf, 331. pl. 20

C. deviſes a houſe to three brothers, provided always that the houſe be not ſold, but go unto the next of blood that are males, this is an eſtate-tail to each ſucceſſively, 334 pl. 23

Deviſe to one brother on condition, but on failure to remain to *the houſe*, ſhall be conſtrued *to the moſt worthy in blood* of the deviſor's family, 334. pl. 29

A man having iſſue two daughters by divers venters, deviſes a moiety of his lands to his wife for ſeven years, and that his eldeſt daughter ſhould enter into the other moiety on the day of her marriage, and if his wife be *enceinte* with a daughter, that ſhe ſhould take an equal ſhare with her other ſiſter; this is no deviſe of that moiety to the eldeſt, but only a liberty to enter and occupy the land during the minority of the youngeſt, who ſhall take an equal ſhare in the whole, 342. pl. 54

Ceſtuy que uſe in the time of *Edw.* 4. deviſed to his ſon and his heirs for ever, but if he die without iſſue, living his executors, that they ſhall ſell; this is no eſtate tail or gift of the land itſelf, 354. pl. 33

Deviſe of the "*fee ſimple of my eſtate to B.* "*and after her deceaſe to C. her ſon*" (who was alſo her heir), gives *B.* an eſtate for life, remainder to *C.* for life, with the ultimate remainder in fee to *B.* 357. pl. 44

A termor deviſes the occupation of his land to his wife for as many of the years as ſhe ſhall live, and after her death the remainder of the years unexpired to his ſon, and makes her ſole executrix, and dies; the widow enters and agrees to the legacy, there being aſſets beſides ſufficient to pay his debts. She cannot afterwards diſpoſe of the term abſolutely againſt the ſon, as executrix, nor as deviſee, ſince ſhe can only have the whole on the contingency of her living ſo long, 358. pl. 50

Deviſe of a reverſion to *A.* paying therefore yearly during his life 40s. to *B.* gives but a life-eſtate, and the 40s. become payable only when the eſtate commences, 371 pl. 5

A. deviſes two parts of his lands to his four youngeſt ſons in tail, and if the infant *in ventre ſa feme* be a ſon that he ſhall have a fifth part as coheir, but if all die without iſſue then to revert; *A.* dies, afterwards a ſon is born, he ſhall take nothing, nor ſhall any of the two parts revert till all five are dead without iſſue, 304. pl. 50

Deviſe of a term to *A.* when of age, and in the mean time the occupation and profits to the executrix; if ſhe alien the term, what remedy has *A.* 328. pl. 11

See CONDITION, JOINTENANCY.

DISCONTINUANCE OF ACTION.

A *ve. fa. cum proviſo* was returned and filed; two hours after a *ve. fa.* by the plaintiff was alſo returned and filed; each party then ſued out a *ha. cor. jur.* which being returned the plaintiff failed to continue the *jurata*; yet this is no diſcontinuance, for the continuance entered by the defendant ſhall ſuffice, 217. pl. 61

There can be no diſcontinuance between aid prayer and the *procedendo*, for the parties are without day, 256. pl. 8

DISCONTINUANCE OF ESTATE.

Though fine or recovery bars the heirs of tenant in tail male it is no diſcontinuance, nor affects the reverſion, being in the King, 32. pl. 1

If after partition by deed before 31. H. 8. c. 1. between the alienee of one coparcener in tail and the other coparcener, that other grant her part to the alienee and

and die, a releaſe to him with warranty by the iſſue is not a diſcontinuance, 68. pl. 54

Whether a deviſe by tenant in tail be a diſcontinuance, 116. pl. 68

Eſtates in fee to huſband and wife are not within 11. H. 7. c. 20. 248. pl. 78

Tenant in tail makes a feoffment with letter of attorney, who ouſts the leſſor's ſervant and makes livery, to which the termor agrees, *ſaving his term*, this is a diſcontinuance, 363. pl. 22

Tenant for life levies a fine *come ceo* to himſelf in fee; afterwards the remainder man in tail joins him in a feoffment; this is a diſcontinuance of the eſtate-tail, 324. pl. 35

See FINE.

DISSEISIN.

Treſpaſs in an houſe; iſſue joined upon a diſſeiſin of the plaintiff; defendant in evidence to prove no diſſeiſin ſhewed a recovery of lands, with averment that the houſe was built afterwards; the jury were charged to find the diſſeiſin if they did not find the building upon the land, but if they did to pray the advice of the court, 47. pl. 6

If he who has a leaſe to commence on a future day enter before the time limited he is a diſſeiſor &c. and his term ſhall never commence, 96. pl. 44

Livery by letter of attorney of an infant is a diſſeiſin, 108. pl. 33

If one execute an office by appointment of the Court to which another has right, he is a diſſeiſor, 115. pl. 64

A diſſeiſor makes a leaſe, reſerving rent, the diſſeiſee re-enters, upon whom the leſſee enters for his term, and continues to pay the rent to the diſſeiſor, both ſhall be diſſeiſors; and non tenure by one is a bad plea, for they are both tenants, 134. pl. 11

After making a leaſe for years the leſſor aſſured his wife a jointure on the lands, and then aliened them; on the death of the huſband the wife enters, and the tenant attorns to her; this is a diſſeiſin or not at the election of the alienee, 178. pl. 38

Statute 32. H. 8. c. 33. is to be underſtood as well of diſſeiſins by any other means as of thoſe which are effected by force, 219. pl. 7

If the diſſeiſee enter, and the tenant of the diſſeiſor, deſired by him ſo to do, re-enter, and pay the rent to the uſe of his leſſor, the freehold again veſts in the *ceſtuy que uſe* without expreſs agreement after the diſſeiſin, 141. pl. 47

See EMBLEMENTS, TENANT BY SUFFERANCE.

DISTRESS.

Ceſtuy que uſe after the ſtatute of Uſes may diſtrain for rent upon the leſſee for life, under a leaſe made by the feoffees before the ſtatute, without attornment, 30. pl. 204

Whether a ferry-boat may be diſtrained for an annual rent payable by preſcription by the owner of a ferry, in conſideration of keeping the pier of a bridge in repair, 117. pl. 73

Diſtreſs taken in the honour of *W.* in one county, and driven to the caſtle of *W.* which is in another, and where the court of the honour is, the *accedas ad curiam* may be directed to the ſheriff of the latter county, and plaintiff declare of a taking in the firſt, 168. pl. 20

In an action on the ſecond branch of the firſt ſection of 1. & 2. P. and M. c. 12. the place where the diſtreſs was taken is not material; though it is on the firſt branch, where the diſtance is the offence, 237. pl. 35

Count for diſtraining beaſts of the plough *contra formam ſtatuti* is well enough, without averring that he had other goods ſufficient for the diſtreſs, 312. pl. 86

A. and *B.* having adjoining cloſes, *A.* is to keep up the fence; if by his default *B.*'s cattle come through, A.'s landlord cannot diſtrain them for rent, 317. pl. 9

A fine was levied after the ſtatute of Uſes, to the intent that the conuſor ſhould have a rent out of the land, though no clauſe of diſtreſs he may diſtrain for it, 362 pl 21

If a man bring annuity, or an action which does not lie, where he may diſtrain, it does not diſcharge the land, 334. pl. 2

See REPLEVIN.

DIVORCE.

Cauſâ frigiditatis is *à vinculo matrimonii*; but if both marry again and have children they ſhall cohabit again, for the church was deceived, 178. pl. 40

DOWER.

The court of augmentations had no power to aſſign, 263 pl. 37

A man having 360l. in land, in 60l. of which his wife was a joint purchaſor with him, deviſes to her the third part of all his lands, beſides her ſaid jointure; ſhe waved the jointure, and demanded a third part of all as the legacy, and then a third part of the reſidue for her dower; the legacy was adjudged her as ſhe demanded it, and 40l given her by agreement for the whole of her dower, 61. pl. 31

Lands by purchaſe to *A.* and his wife, and to the heirs male of their two bodies lawfully begotten, is a bar of dower within the intent though out of the letter ter of 27. H. 8. c. 10. §. 6. 97. pl. 48

A man ſeiſed of ſocage land in fee and of land *in capite* in tail deviſed the third part of all to his wife in recompenſe of dower, and died; ſhe enters immediately into the third part of the fee ſimple lands, this ſhall bar her further claim by 27. H. 8. c. 10. 220. pl. 12

Fine by the huſband bars dower, unleſs the wife claims within five years from his death, 224. pl. 28

The wife of one executed for treaſon ſhall not have dower of lands which he aliened before the treaſon, although they are not forfeited, 140. pl. 42

Grant in fee by *A.* to himſelf and his wife on their marriage, may be averred for jointure, and ſhall bar dower by the equity of 27. H. 8. c. 10. 248. pl. 78

A *ceſtuy que uſe* before 27. H. 8. procured his feoffees to execute an eſtate to him and his wife of part of the lands in uſe, and after that year died ſeiſed of the reſidue: Whether taking her eſtate therein is a bar of the widow's dower without an expreſs averment that ſuch eſtate was for her jointure, 266. pl. 7

A life eſtate in remainder after the death of the huſband, had limited on condition, is a good jointure and bar of dower within the intent of 27. H. 8. c. 10. 317 pl. 7

In dower, a remitter to defeat the eſtate of the huſband cannot be given in evidence under *ne unque ſeiſie que dower*, but muſt be ſpecially pleaded, 41. pl. 1

Acceptance of rent in ſatisfaction of dower after judgment to recover is no bar to a *ſcire facias* to have execution, unleſs the rent were aſſigned out of the land demanded, 91. pl. 12

In dower, that the demandant entered into part of the land *puis darrein continuance*, is a good plea in bar; and if ſhe would reply her quarantine, ſhe muſt ſhew the death of her huſband and the continuance of the forty days, 76. pl. 32

To a writ of dower, none may plead deſinue of charters but the tenant in poſſeſſion by deſcent as heir to the huſband; nor is that plea good for more land than the charters concern; and they ſhould be ſhewn in certain unleſs ſealed up or in a box, 230. pl. 52

In dower, the tenant pleading an aſſignment of rent out of the land muſt ſhew that he had ſufficient eſtate at the time of the aſſignment, 361. pl. 11

Dower againſt eight, two confeſs, the reſt plead, judgment immediately for the third part of two eighths of the land; and on the iſſue found for the demandant, judgment for one third of the remaining ſix parts, 187. pl. 7

Where in power the heir being vouched pleads *riens per deſcent*, and the tenant avers aſſets by deſcent, the widow is entitled to judgment immediately againſt the heir *ſi &c. ſi non* againſt the tenant before the trial of the iſſue. But whether the tenant muſt not aver that the aſſets by deſcent are in fee *quære*, for lands in tail ſhall not ſave thoſe of the tenant, 202. pl. 71

The tenant vouched the heir in ward to the Queen, of whom he prayed aid: after a *procedendo*, judgment was that the demandant recover againſt the tenant, and he over againſt the heir; but with ſtay of execution of the recovery over until the full age of the heir, and until the Queen's hands be amoved, 256. pl. 7

The ſheriff aſſigned dower by metes and bounds, the demandant refuſed to receive it, ſtill ſhe may enter at any time after, but ſhall not have an *alias habere facias ſeiſinam*, 278. pl. 4

See DAMAGES, EVIDENCE, FINE, MARRIAGE, SEISIN, VIEW.

E.

ECCLESIASTICAL PERSONS.

Before induction the prebendary cannot charge his church lands, 221. pl. 18

After

After adminiſtration committed, the ordinary can neither ſue nor be ſued for a debt of the inteſtate, 247. pl. 73

No action would lie againſt the ordinary at common law, but by *Weſt.* 2. c. 19. 247. pl. 73

That the preſentee is a hunter of tavers and unlawful games which are only *malaprohibita* is no cauſe for the biſhop to refuſe to admit him, 254 pl. 2

The *Biſhop of St. D.* by licence founds a college with canons ſecular, reſerving to himſelf *officium decani tanquam decanus ut eſt in eccleſiâ Menevenſi*, and having aſſigned a benefice to one of the canonries tranſlates it to the deanery; this tranſlation is void, eſpecially for his own benefit; and the creation of the deanery is alſo void, for want of ſufficient words to create ſuch office, 287. pl. 50

A clerk once qualified as chaplain to a peer, though the peer die, or he quit his ſervice, may retain his pluralities: and though he have not purchaſed a diſpenſation it is no forfeiture, 318. pl. 88

If a lord having right to three chaplains only retain ſix, the three firſt appointed are legally ſo, 312. pl. 88

Whether the authority of the guardian of the ſpiritualities to execute a writ previouſly directed to them, is determined by the creation of a new biſhop, 350. pl. 19

See CHURCH, LEASE.

EJECTIONE FIRMÆ.

See ERROR, PLEADINGS.

ELECTION.

A man being bound to releaſe one from wardſhip at the age of twenty-one, or before on the requeſt of the obligee, who ſhall have the election the requeſt being made before, 109. pl. 32

A ſeiſed of one thouſand acres in fee infeoffs *B.* without deed of ſeventeen acres, *habendum* to him and his heirs, at the election of him and his heirs; wherever they pleaſe; *B.* dies before election; at any rate his heir might not elect, 281. pl. 17

One grants a rent-charge by deed, without ſaying for himſelf and his heirs; by his death the grantee's election is determined, and he cannot charge the heir in annuity, 344. pl. 2

See DISSEISIN, GRANT.

EMBLEMENTS.

After regreſs made the diſſeiſee ſhall have the corn, though ſevered from the land by the diſſeiſor, 31. pl. 219

A. conveys to the uſe of himſelf and his wife for their lives, then ſows the land, dies, the wife, and not the executors ſhall have the crop, 315. pl. 2

ENTRY.

Leaſe with covenant by leſſee that if he alien the leſſor may enter upon ſuch alienation, the leſſor muſt make an actual entry before he can make a new leaſe, 6. pl. 1

Ceſtuy que uſe in tail makes a feoffment and dies, the freehold is not in the ancient feoffees immediately by the death without re-entry, 57. pl. 2

Whether entry by the plaintiff after verdict, but before judgment, be a bar in debt, for the damages on a judgment in aſſiſe, 107. pl. 24

A man being diſſeiſed whilſt beyond ſea returns, and afterwards departs again, during which time a deſcent is caſt, Whether the entry be tolled unleſs he had notice whilſt in the realm, 143. pl. 57

A bailiff cannot enter for a condition broken without expreſs authority, 222. pl. 21

A. tenant in tail expectant on an eſtate for life, leaſes to *B.* who levies a fine to *A.* rendering back to him for the term, paying a rent; *A.* dies, and ſo does the tenant for life; the iſſue in tail accepts the rent; Whether this ſhall bar his entry, 279. pl. 7

Ceſtuy que uſe in tail, remainder over, after 27. H. 8. levies a fine, and dies without iſſue, within the five years a ſtranger enters *in the name of the feoffees or the ſurvivor of them*, without naming any one; *quære*, if lawful, 312. pl. 87

Diſſeiſor of lands in *A. B.* and *C.* all in one county, levies a fine of thoſe in *A.* Entry of the diſſeiſee into *B.* and *C.* in the name of all, will not ſerve for thoſe in *A.* 337. pl. 37

A. makes a feoffment after 27. H. 8. to the uſe of his wife, and if he ſurvive her to the uſe of himſelf and ſuch woman as

as he ſhall afterwards marry for the term of their lives, remainder to *B. B.* and the feoffees before the ſecond marriage, with the aſſent of *A.* who levies a fine accordingly, enfeoff to new uſes. After the death of *A.* and five years after the fine, Whether the ſecond wife may enter with the aſſent of the feoffees to revive the firſt uſe, 340. pl. 48

A. and *B.* are coparceners; *A.* is attainted of treaſon, the King grants the land without office to another, ſtill *B.* may enter upon the patentee for her moiety, without petition or *monſtrans de droit*, 325. pl. 38

See CONDITION, REVERSION.

ERROR.

If defendant be outlawed upon a *ca. ſa.* where no *capias* lies in proceſs, he may have error in the ſame court where the judgment was given. But where the error is the default of the court itſelf, as the want of a continuance, error *coram nobis* does not lie, 105. pl. 37

Error on a judgment in aſſiſe does not lie before the juſtices of C. B. 250. pl. 85

In *formedon*, if the demandant has judgment for a part, no writ of error lies till the whole is determined, 291. pl. 68

Error lies in B. R. on a judgment in *ſcire facias* in the chancery, 315. pl. 100

Error does not lie into B. R. or C. B. from the Cinque Ports; but a falſe judgment there is reverſible by the lord warden in the court of *Shepway*, 376. pl. 23

The writ of error in parliament may be returnable at the next ſeſſion, 375 pl. 19

The iſſue may have a writ of error to reverſe a common recovery ſuffered by tenant in tail, although he brought a writ of error himſelf, and releaſed all errors to bar the eſtate; and ſo may he in remainder if the iſſue fail, although not privy in blood, 188. pl. 8

In *ejectione firmæ*, if plaintiff declare on a leaſe to commence at *Michaelmas* after the death of *J. S.* and he do not ſhew the time of the death and entry, it is error, 89. pl. 111

The writ in *ejectione firmæ* was for entering a manor *vi et armis* and ſeizing goods, the iſſue *non ejecit* inſtead of *non. culp.* is error, *ibid.*

On ſuch writ, if plaintiff be not amerced for his falſe claim as to the goods, it is error, *ibid.*

Judgment of *capiatur pro fine* where the force and arms is not found, is error, *ibid.*

Omiſſion of the plaintiff's attorney's name in the record, where he offered himſelf on the *quarto die* by attorney, is error, though mentioned afterwards in the declaration, 93. pl. 25

So in waſte, omiſſion in the writ of what eſtate feoffees to the uſe of the plaintiff were ſeized, though expreſſed in the aſſignment of waſte, is error, 93. pl 25

Not ſhewing the commencement of a particular eſtate alledged is error, 93. pl. 25

Plaintiff ſhewing a tenancy for life, *with reverſion to himſelf*, without the words appertaining or belonging, is error, 94. pl. 27

If the *venire facias* be returnable *meuſ. Mich.* and the *ba. cor. jur.* on the octave of *St. Martin*, it is error, 97. pl. 47

If the *ba. cor. jur.* be returnable on a general return day, with the *niſi prius* for a day between that and the *quarto die poſt*, a trial under it is erroneous, 97. pl. 47

If a writ of entry be made returnable the day before the *teſte*, by miſtake of the attorney, it is error, 129. pl. 62

If the amercement of the defendant be omitted in the judgment, it is error, 132. pl. 80

An *exigent* returnable *menſe Michael.* entered on the roll as returnable *octab. Mich.* and defendant outlawed at a county court between, is error, for the record is to be credited, 211. pl. 32

The *ded pot.* to make attorney being teſted after the return of the writ of entry in a common recovery is error, for the judgment hath relation to that return, 220. pl. 13

After error brought defendant was taken on a *ca. ſa.* iſſuing out of C. B. but ſealed with the ſeal of B. R. on ſuggeſtion of which he was immediately diſcharged, and the plaintiff's attorney committed, 244. pl. 58

Warrant of attorney entered after error brought, the plaintiff in error delaying to deliver the writ to the clerk of the treaſury,

treaſury till ſix days after the return, 225. pl. 34

Judgment reverſed for want of plaintiff's warrant of attorney, though the writ of error and judgment were both in one Term, 230. pl. 58

Warrant of attorney not entered on the roll of warrants of attorney is error, 330. pl. 18

Not ſo of admiſſions of guardian or *prochein amy*, 330. pl. 18

Want of warrant of attorney of the plaintiff in aſſiſe is error, 363. pl. 23

Though the eſſoin be entered on the plea roll, want of it on the roll of eſſoins is error, 330. pl. 18

To an information for intruſion defendant pleads a grant from *A. per nomen* of all that land &c. containing 100 *feet in length and* 155 *in breadth*; replication traverſes, that *A.* did grant *per nomen &c.* containing 155 *feet in length*, and taking no notice of any *breadth*, and concludes to the country. Verdict that *A* did not grant *per nomen &c.* containing 155 *feet in length prout* the *defendant in bar* alleged, inſtead of *prout the attorney for our lord the King* above alledged; and judgment reverſed for theſe errors, 353. pl. 28

When matter of fact is aſſigned for error, *in nullo eſt erratum* is a good rejoinder if defendant wiſh to admit the fact but deny that it is legal error, but if he wiſh to diſpute the truth of the fact in iſſue he muſt plead it ſpecially, 65. pl. 7

After error brought and a *ſuperſedeas* awarded, if defendant ſue a *ſcire facias* to have execution, plaintiff may appear and aſſign errors, 77 pl. 35

One outlawed on a judgment in debt brought error; in the original he had the addition of *ſadler*, but in the *ſcire facias* for execution, and in the writ of error, *ſuliter*; for this variance he muſt bring a new writ, as there is no ſuch original, 173. pl. 16

On delivery of a writ of error to the chief juſtice or clerk of the treaſury, the Court muſt not award execution if the plaintiff proſecute to have the record removed before the day of the return, otherwiſe they may, 244. pl. 63

Errors upon an information of uſury on 37. H. 8. c. 9. 368. pl. 43

Judgment in annuity *for all arrears before and pending the writ, amounting to* 75*l.* which was more, by one quarter's annuity, than was incurred, is but a miſtake of the clerk, and not error, 55 pl. 8

Treſpaſs ſuppoſed in *C. juxta S.* whereas it is *C. beſides S.* is not error, 315. pl. 99

Nor omiſſion in the *venire facias* of the names of the juſtices of oyer and terminer before whom the writ is returnable, 315. pl. 99

In proceſs in aſſiſe, want of a *venue* in the *teſte* of the *hab. corp. recognit.* is not error, 375. pl. 19

See ANCIENT DEMESNE, ASSISE, CHESTER, EXECUTION, FINE, JOINDER IN ACTION, JURORS, OUTLAWRY, QUARE IMPEDIT, RECORDS.

ESCAPE.

Eſcape is not local; therefore an action may be brought in *Middleſex* for an eſcape out of the *Marſhalſea*, which is in *Surry*, 278. pl. 5

Debt for an eſcape will not lie againſt the heir of the gaoler, 271. pl. 25

Debt does not lie againſt the executor of the warden for ſuffering one in execution to eſcape from the fleet, unleſs the warden was convicted in his life-time, 322. pl. 25

One in execution ſhall not be delivered by a protection; and if by writ or commandment of the King under 1. R. 2. c. 12. he be ſet at large, Whether the gaoler is not chargeable to the party, 162. pl. 50

The marſhal, by leave of the chief juſtice and aſſent of the plaintiff, permitted one in execution to go at large for a time, when he returns he is in execution again; ſo that if he again permit him to quit priſon it is an eſcape, 275. pl. 46

The marſhal by his patent might make a deputy. The deputy ſuffers one in execution to go into *Norfolk* with a keeper; the deputy is liable for an eſcape, 278. pl. 5

If the warden, though by command of the lord treaſurer and chancellor of the exchequer, ſuffer one in execution at the King's ſuit, and likewiſe at the ſuit of a ſubject, to go into the country with a keeper to collect the King's debt, it is an eſcape, 297. pl. 24

Debt againſt ſheriffs of *L.* for an eſcape. Plea that *J.* and *C.* before the day laid in the declaration, ſheriffs of *L.* ſuffered the priſoner to go at large in the county of *S.* and demurrer: 1ſt, Becauſe the eſcape might be before the time laid, and yet not during the time that *J.* and *C.* were in office: 2dly, Becauſe it is repugnant that the eſcape ſhould be at *S.* whilſt the priſoner was in cuſtody at *L.*: 3dly, For not alleging the priſoner in cuſtody at *S.*: 4thly, Becauſe they neither traverſe, nor confeſs and avoid, but only lay the blame on another, 66. pl. 9

See PRIVILEGE.

ESCHEAT.

See ATTAINDER.

ESSOIN.

Prayees in aid may ſever in their eſſoins; but in *ſcire facias* the prayee in aid cannot have any eſſoin, 26. pl. 168

Whether in eſſoin *pur ſervice le roy* the day to bring in the warranty ſhall be given to the eſſoiner or to the party eſſoined, 154. pl. 16

Whether the abſence warranted ſhall be on *Monday* the morrow of the octave of the *Holy Trinity*, or on the octave generally, which is *Sunday*. And Whether the warranty ſhould be by writ cloſe or letters patent, and ſhould recite the eſſoin, and that the eſſoiner was ſworn, or not, 154 pl. 17

If a *formedon* be returned *tardè* the tenant cannot be eſſoined, for he had no day in court, 252. pl. 94

Tenant refuſing to appear, but ſeen in court, ſhall not be eſſoined, 268. pl. 16

The tenant eſſoined at the return of the *venire facias* in a real action, 324 pl. 36

See ERROR.

ESTATE.

If land be leaſed by the premiſes of an indenture to three, *habendum* to one for life, remainder to another for life, remainder to the third for life, they ſhall ſhall take in ſucceſſion, 160. pl. 43

"*Habendum eis et hæredibus ſuis in perpe-*
"*tuum ad proprium opus et uſum ipſorum*
"*rum A. B. et C. in perpetuum,*" without *et hæredum ſuorum*, with warranty to them, their heirs and aſſigns, *in formâ prædictâ*, gives only an eſtate for life, 169. pl. 21

An uſe was limited to a man and woman, and the heirs of their bodies, before the ſtatute of Uſes, who afterwards intermarry; then the ſtatute paſſes, ſtill they have ſeveral moieties. And if the huſband alien, the wife at his death can only claim a moiety, though the iſſue may have *formedon* for the whole, 149. pl. 82

A. levies a fine to himſelf and wife for life, remainder to his own right heirs, with grant and render to him alone for life, remainder to *B.* for life, remainder to *A.*'s right heirs, the render by the wife ſhall not defeat her life intereſt, and the remainder to his own right heirs is void, the ancient reverſion being in him, 237. pl. 31

Grant of a rent to *F.* by fine, *habendum* to him *and his aſſigns* during the life of *C.* and if it be in arrear that it ſhall be lawful for *F. and his heirs* to diſtrain during the life of *C.*; this clauſe of diſtreſs gives *F.* a fee determinable on the death of *C.* 253. pl. 99

Feoffment to *A.* for life, then to his wife *B.* till ſuch child as he ſhall beget arrive at twenty one years of age, and afterwards during her widowhood, though *A.* die without child the widow is entitled to hold the lands, 300. pl. 39

Feoffment to *A.* and his heirs until *B.* pay 10l.; *B.* dies without paying, *A.* ſhall hold the fee, 300. pl. 39

A. tenant in tail general has iſſue two ſons *B.* and *C.*; *B.* has iſſue a daughter and dies, leaving his wife *enceinte*; *A.* ſuffers a common recovery to himſelf for life, remainder to *D.* for years, remainder to the heirs male of *A.*'s body and to the heirs male of their bodies, and dies. Afterwards *B.*'s wife is delivered of a ſon, he ſhall inherit now though *C.* took by deſcent until he was born, 374. pl. 15

See CONVEYANCE, DEVISE, RELEASE.

ESTOPPEL.

The heir is eſtopped from falſifying the conſideration acknowledged in the deed of feoffment of his anceſtor, 169. pl. 22

Avowry that the place where &c. is parcel of the manor of *K.* defendant's freehold; plea that it is parcel of the manor of *K.* and makes title to it without this, that

that the ſaid manor of *K.* whereof &c. is defendant's freehold; plaintiff is eſtopped from ſhewing that defendant has no ſuch manor, and that then the place is not parcel, for his plea admits it, 183. pl. 58

The obligor of a bond conditioned for the payment of all ſums for which *A.* ſtands bound by deed to *B.* is eſtopped from pleading that *A* was never bound by any deed to *B.* 196. pl. 41

If on avowry for diſtreſs for rent the tenant pray in aid, claiming a leaſe for ten years, whereas he had a leaſe for ſixty, this will not eſtop his executors from claiming to the end of the term againſt the leſſor or his grantee of the reverſion, 290. pl. 59

See FINE, QUARE IMPEDIT, VARIANCE.

ESTRAY.

A waif happens in one franchiſe, and before ſeizure ſtrays into another, the lord of the ſecond franchiſe ſhall have it, 338. pl. 40

ESTREPEMENT.

See WASTE.

EVIDENCE.

Grant by the King *to T. C. in tail, remainder to G. C. in tail*; that *T C.* was attainted of treaſon and executed, leaving no iſſue, (all remainders &c. of ſtrangers being ſaved by act of parliament,) and that after the ſaid act the King granted to *A.* is good evidence to ſupport a traverſe by *G. C.* of the King's being ſeiſed in fee at the time of the ſecond grant to *A.* 100. pl. 72

In dower, where iſſue is joined on reconciliation after elopement, defendant cannot give in evidence any other elopement than that pleaded, 107. pl. 22

Whether payment and tearing off the ſeal by the plaintiff may be given in evidence on *non eſt factum*, 112. pl. 50

Nil habuit in tenementis may be given in evidence on *non dimiſit* pleaded to a parol leaſe for years, 122. pl. 23

Whether a demiſe by *A.* and ſix others, feoffees to *A.*'s uſe, will ſupport a plea of a demiſe by *A.* or Whether it will be good for a ſeventh part, 158. pl. 31

In *detinue* for a leaſe by an executrix that ſhe afterwards married *B.* who ſubmitted the intereſt and title to arbitration, when a moiety only was awarded to the wife, cannot be given in evidence under the general iſſue, 183. pl. 57

In dower, circumſtantial proof of the death of the huſband after ſeven years abſence was admitted, none being offered to the contrary, 185. pl. 65

A fine was reverſed in B. R. for nonage by inſpection, afterwards on a writ of entry in C. B. an exemplification of witneſſes in chancery was given in evidence proving full age; this the Court thought of no force againſt the judgment in B R. but the jury found with the teſtimony in chancery which was afterwards affirmed in attaint, 201. pl. 63

Iſſue that executors had aſſets on the day of the writ, is well ſupported by evidence of aſſets paid into their hands in the prerogative court on that morning, though they prove immediate payment of it over to another creditor by order of the Court previous to the actual iſſuing of the writ, 208. pl. 16

In debt on a contract for 20l. defendant may give in evidence under the general iſſue that it was only for twenty marks, 219. pl. 11

Though a bond debt to be paid at a certain day and place be diſcharged by acceptance before the day and at another place, yet this evidence will not ſupport a general plea of payment according to the condition, 222. pl. 22

On not guilty pleaded to an indictment on 5. El. c. 1. the defendant may give in evidence that the perſon tendering the oath was not biſhop at the time, 234. pl. 15

In debt for rent of certain lands, proof of a demiſe of part only will not ſupport the declaration, 260. pl. 22

The certificates of commiſſioners delegates of appeals from the prerogative court of *Canterbury* is good evidence of an excommunication, 371. pl. 4

Avowry for fealty and ſuit of court, alleging ſeiſin by fealty, rent, and ſuit, proof of ſeiſin by rent only will not ſupport an iſſue on the whole ſeiſin traverſed, 330. pl. 19

In treſpaſs *quare clauſum fregit*, if defendant plead, that the *locus in quo* is ſix acres in *D.* which are his freehold, without naming them in certain, and plaintiff reply, "his freehold," each having ſix acres there, defendant cannot give in evidence

evidence that he did the treſpaſs in his own ſix acree, 23. pl. 147

See ATTAINT, DOWER, EXECUTOR, INNKEEPER, NEW ASSIGNMENT, SLANDER, TREASON, VARIANCE, VILLEIN, WASTE.

EXECUTION.

In an execution on a bond of the anceſtor, and judgment by *nil dicit*, the plaintiff ſhall not have a *ca. ſa.* againſt the heir, but only a ſpecial *elegit* of lands deſcended in fee ſimple, 81. pl. 62

Upon *riens per diſcent* found againſt the heir, who had aliened pending the writ, the judgment and *elegit* ſhall be general, and upon a return of *nihil* and the alienation ſpecially, a new writ ſhall iſſue of all the lands &c. which defendant had on the day of *niſi prius*, 149. pl. 80

When the defendant has lands in ſeveral counties, the plaintiff may have ſeveral *elegits* for the whole debt into each county, 162. pl. 51

The executor of an executor, to an action on a bond of the firſt teſtator pleaded, that his teſtator *plene adminiſtravit*, the jury find aſſets at the time of his death, the judgment ſhall be *de bonis teſtatoris*, and the damages *de bonis propriis*, and on a *devaſtavit* returned an execution generally *de bonis propriis*, where on return of *nulla bona* plaintiff may have a *capias* or *elegit*, 185. pl. 66

In debt on recognizance a *ca. ſa.* lies, 306. pl. 63

A *ca. ſa.* may be awarded on an attachment of privilege, 192. pl. 24

After judgment defendant died, plaintiff may ſue out a *ſcire facias* againſt the heir and tenants of the land which was the defendant's at the time of the judgment, and *elegits* againſt them, without previous proceſs againſt the executors, 207. pl. 15

Debt againſt two executors, one confeſſes, the other makes default, judgment is *de bonis teſtatoris* againſt both; and if on a *fi. fa.* upon this judgment a *devaſtavit* be returned againſt the defaulter, the *ſcire facias* and execution *de bonis propriis* is againſt him alone, 210. pl. 23

Execution awarded on a *ſcire facias* in C. B. defendant being in the *Fleet* for another cauſe, and brought into the Bench by *habeas corpus*, on examination proving to be the ſame perſon, may be re-committed in execution on the judgment without *ſcire facias*, though more than a year has intervened, 214. pl. 47

A *teſtatum ca. ſa.* not being ſerved in time was altered to a later return day, and while yet unſealed defendant was arreſted upon it: the Court committed all who had any hand in the alteration and arreſt; but as the plaintiff was wholly innocent the defendant was kept in execution, 241. pl. 50

Plaintiff's agent and the ſheriff arreſt the defendant, and afterwards procure a *ca. ſa.* to warrant the arreſt: both were fined for this, but as the plaintiff was innocent the Court kept the defendant in execution, 244. pl. 61

One was condemned in *ſcire facias* on a recognizance in chancery; the warden informing the Court that he was in the *Fleet pro certis cauſis*, the Court ordered him to be detained in execution thereof, this is ill: 1ſt, Becauſe no *capias* lies in this caſe, but only *fi. fa.* or *elegit*: 2dly, He ſhould at any rate have been brought up and queſtioned as to indentity: 3dly, Becauſe the plaintiff never prayed this ſort of execution, and perhaps would elect ſome other, 306. pl. 62

The ſheriff under a *fi. fa.* ſells a term, afterwards judgment is reverſed, the produce and not the term ſhall be reſtored, 363. pl 24

If defendant die after the writ awarded, and before execution, it may be ſerved upon his goods in the hands of his adminiſtrator, 76. pl. 31

Pending attaint execution may be ſued out on the original judgment, 81. pl. 65

Plaintiff may have a *venditioni exponas* to the ſheriff to ſell goods ſeized under a *fi. fa.* if the *ſuperſedeas* upon error be not delivered till after ſuch ſeizure, 99. pl. 57

The profits of the office of filazer cannot be taken in execution upon a ſtatute, 7 pl. 10

If the conuſee of a ſtatute, having a rent-charge, before extent purchaſe parcel of the land, the rent is gone and cannot be taken in execution; *ſecus* if the rent had been in execution before he got the land, 205. pl. 7

The

The executor of the conuſee of a ſtatute-merchant, who in his life-time had ſued out a *certiorari* and proceeded to a *capias* againſt the conuſor, cannot have a *ſcire facias*, *alias capias* or writ of extent, but muſt commence entirely *de novo*, 180. pl. 49

The conuſee of a ſtatute ſued execution, on which was returned the death of the conuſor ſeiſed of a manor and an extent thereof, without ſhewing what eſtate he had in it, this is void, for after his death no land but fee ſimple can be extended, 299. pl. 31

Until the *liberate* lands extended upon a ſtatute-ſtaple are not in the conuſees, and the ſheriff is bound to return them to a writ of the King's prerogative claiming them to diſcharge a debt due to him from the conuſor, 97. pl. 20

Upon an inſufficient or uncertain return of an extent, although the conuſor have accepted it by *liberate* he may have a re-extent, 299. pl. 31

The conuſee of a ſtatute takes a fine of the land to the uſe of another in fee, this does not diſcharge, 349. pl. 15

Whether an eſtate by ſtatute-ſtaple is ſaved by 2. Ed. 6. c. 8. §. 3. 319. pl. 14

See FORGERY, PREROGATIVE, SEISIN.

EXECUTORS AND ADMINISTRATORS.

In letters *ad colligend.* the name of the perſon granting them ſhould be inſerted, 256. pl. 8

Whether adminiſtration committed by parol only, be good, 294. pl. 7

Whether letters of adminiſtration muſt be in the name of the ordinary or may be in that of his commiſſary, 294. pl. 7

If an inteſtate have *bona notabilia* in *England* and in *Ireland*, there ſhall be ſeveral adminiſtrations by the ordinary in each country for all within his province, 305. pl. 58

Executors may redeem with their own money goods pledged by the teſtator, or pay his debts and retain the value of what they pay, 2. pl. 3

Executors diſpoſing of their own money *in pios uſus* for the teſtator's ſoul, may retain goods to the value, 187. pl. 6

Adminiſtrators muſt pay judgment debts before ſpecialties, 80. pl. 53

If the ordinary have notice of an action brought againſt him on an inteſtate's bond, he muſt not diſpoſe of goods in his hands, unleſs he reſerves aſſets to ſatisfy that alſo, 232. pl. 5

If two executors have a term, and one grant all that belongs to him, the whole term paſſes; *ſecus* of joint-tenants, 23. pl. 146

Where a man deviſes land to his executor for thirty years, to the intent and purpoſe that he ſhould annually therefrom pay 30l to certain perſons, whom he makes ſupervifors for the payment of divers legacies by them at divers times, remainder over: it is ſufficient if the executor himſelf pay the legacies with conſent of theſe ſupervifors, though not all at the very times when due, 163. pl. 52

Of two executors, plaintiffs, one is ſummoned and ſevered; after judgment he cannot acknowledge ſatisfaction, though his releaſe before judgment would be a bar, 319. pl. 15

An adminiſtratrix ſues a debtor of the inteſtate, pending which ſuit another by covin procures a ſecond adminiſtration to be committed to him jointly with her, and after judgment releaſes to the debtor, on which he ſues *audita querela*, and in the mean time the ſecond adminiſtration is revoked; the releaſe is of no avail, 339. pl. 46

A. deviſed all his lands to *B.* except a manor, *which I appoint to pay my debts*, and made two executors; one dies, the other may ſell the manor to pay the debts, 371. pl. 3

An executrix appealing from a ſentence of divorce for her pre-contract, and dying before judgment, Whether the huſband by adminiſtering the teſtator's goods pending the appeal becomes an executor *de ſon tort*, 105. pl. 17

What poſſeſſion and receipt of the deceaſed goods or debts will be ſufficient to charge a man as executor, and what diſpoſition of them ſhall make him executor *de ſon tort*, 166. pl. 10

In letters *ad colligend.* the ordinary directed one to ſell periſhable goods; the party ſelling is thereby an executor *de ſon tort*, for the ordinary himſelf cannot ſell, 256. pl. 8

Where a term is deviſed to an executor, he ſhall take as executor if he enter without declaring that it is as legatee, 277. pl 59

A term

A term is deviſed to the executor, who enters and dies before probate, yet his entry is a good execution of the deviſe, 367. pl. 39

A. bequeaths, after payment of his debts and legacies, the reſidue to his wife to diſpoſe for the good of his ſoul, and makes her executrix; ſhe takes the reſidue as ſuch, and not as legatee, 331. pl 21

C. makes a feoffment to the uſe of himſelf for life, and after his deceaſe to the uſe of his executor for twenty years, remainder over; he has no intereſt in the term himſelf, but his executor takes by purchaſe, 309 pl. 76

Executor of adminiſtrator is not ſuable for debts of the inteſtate, 47. pl. 12

Where one executor refuſes to act, and the acting one dies, his executor ſhall have an action for the debt of the firſt teſtator, 16c. pl. 42

In debt againſt the executor of an executor, who pleads that his teſtator *plene adminiſtravit*, he muſt conclude with *riens inter mains* of the firſt executor, and not "in his own hands," and the plaintiff muſt reply aſſets at the time of the firſt executor's death, and not in his life time, for they may have been rightly diſpoſed of, 174. pl. 21

Deviſe that executors ſhall take the profits of lands to pay debts &c till the full age of the heir, both die during the minority, the executor of the ſurviving executor ſhall take, 21c. pl. 24

An executor dies before probate, his executor is not executor of the firſt teſtator; but if the reſidue was bequeathed to his teſtator, he ſhall have adminiſtration with the will annexed; elſe ſuch perſon ſhall to whom it is bequeathed; or in default thereof the next of kin to the firſt teſtator, 372. pl. 8

If a man appoint *A.* and *B.* executors, *proviſo* that *B.* do not adminiſter, the *proviſo* is void, and they ſhall ſue jointly, 3. pl. 7

An action will lie againſt executors on a covenant of their teſtator, though they be not mentioned in the deed, 14. pl. 69

Leſſee, for himſelf and executors, covenants to repair and ſuſtain (principal timber not hurt through their defaults alone excepted). By negligence of the executors the houſe is burnt, covenant lies againſt them, but judgment *de bonis teſtatoris tantum* 324. pl. 34

Under *plene adminiſtravit* the executor ſhewing the debts paid muſt ſhew them paid before the commencement of the action, but judgment againſt him ſhall be *de bonis teſtatoris tantum*, 32. pl. 2

A plea of *ne unques executor* is well ſupported by letters of adminiſtration before he acted at all; yet letters of adminiſtration might be pleaded in abatement by one charged as executor, 305. pl. 61

Where a bargain and ſale was made, to be void on condition of payment of a ſum to the vendee, his heirs or aſſigns, at his death tender to the executors alone is not good, for they are not aſſigns of teſtator, 180. pl. 50

See BARON AND FEME, DEBT, ESCAPE, EXECUTION, ORDINARY, PLEA, RENT, TERM.

EXTINGUISHMENT.

A thing or action perſonal once ſuſpended by the act of the party, is extinct for ever, 140. pl. 39

If land holden by knight ſervice be granted to one in tail, remainder to the King, the ſeigniory is extinct by the King's acceptance of the remainder, and the iſſue ſhall not be in ward to any-body, 154. pl. 18

Grant of land in fee by indenture, rendering rent, and re-entry for non-payment, the grantor by a ſecond indenture covenanting to levy a fine *come ceo &c.* to the only uſes &c. of the firſt, ſuch fine being levied will not extinguiſh the rents or conditions, 157. pl. 28

If one having election to charge the perſon or land diſcharge the one, the law will diſcharge the other, 140. pl. 40

General entry into the warranty ſhall not extinguiſh a rent which the vouchee has out of the land, 157. b. pl. 30

Whether unity of poſſeſſion extinguiſhes an uſage to repair the fence between two cloſes, 295. pl. 19

Seigniory and tenure of obit and chantry lands is extinct by poſſeſſion of the King, but his patentee may be diſtrained for the rent, 313. pl. 91

The King is ſeiſed of a chaſe, and *A.* being lieutenant thereof in fee preſcribes to hunt ſtray deer into the manor

manor of *S.* as a purlieu. The manor comes to the King, who grants it to *B. ita quod* none ſhall enter without the leave of *B.* This unity of poſſeſſion and grant does not deſtroy the preſcriptive right of *A.* 327. pl. 3

The lord improves part of the waſte, and enfeoffs one who has common appendant of this improvement, it does not extinguiſh his common in the reſidue, 339. pl. 45

See GRANT.

F.

FALSE JUDGMENT.

On a nonſuit in falſe judgment the record ſhall not be remanded, but a *ſcire facias* iſſue to have execution of the judgment below, 329. pl. 14

See ANCIENT DEMESNE.

FELO DE SE.

See FORFEITURE.

FELONY.

Releaſing a ſuſpected felon from the ſtocks is felony by the common law though he be not indicted, 99. pl. 60

Where a priſoner is indicted for two felonies, the one capital, the other within clergy, and is tried on the latter firſt, found guilty, *et legit ut clericus*; he ſhould not be burnt, nor a *tradatur ordinario* entered till he is tried for the higher crime, as it would diſcharge him from that and all other felonies committed prior to the conviction, 214 pl. 48

Whether rape can be committed on a child of ſeven years old, 304. pl. 51

FEOFFMENT.

Whether a man may avoid a feoffment made by his father, who was born deaf and dumb, 55. pl. 12

Feoffment to two upon condition to make back an eſtate for life to the feoffor, remainder in fee to a ſtranger, and only one makes back the eſtate, this is good for a moiety, 69. pl. 36

A feoffment without conſideration ſhall be to the uſe of the feoffor, 166. pl. 9

A. ſeiſed of one thouſand acres in fee enfeoff *B.* of ſeventeen acres, *habendum in fee at the election of B. and his heirs*, this is a void feoffment, for the uncertainty; as freehold cannot be in abeyance, and by livery that ought to paſs without any interval from the feoffor to the feoffee, 281. pl. 17

A termor makes a feoffment, and by letter of attorney delivers ſeiſin, the leſſor being upon the land and not oppoſing it, this is a good feoffment; and it ſeems the term ſhall not be ſaid to paſs firſt, 362. pl. 20

See DISCONTINUANCE, LIVERY, MANOR, SURRENDER, VILLEIN.

FINE.

If tenant in tail levy a fine with proclamations, and the five years paſs during his life time, his iſſue is barred, 2. b. pl. 1

If tenant in tail make a feoffment upon condition and die, leaving two ſiſters inheritable to the intail, and one levy a fine of the whole, *ſur releaſe* to the feoffee, Whether this is a bar to the other for her moiety after the five years, 117. pl. 75

Fine by the huſband and wife of land aſſured to her after marriage for jointure does not bar her dower, 358. pl. 49

A tenant in tail in coparcenary levies a fine *come ceo* with warranty of his part, and takes back an eſtate for life, his heir is eſtopped to aver continuance of poſſeſſion againſt this fine, which is a feoffment of record and a diſcontinuance, 324. pl. 30

The iſſue in tail ſhall be barred by the fine of his father, though he claim to be in by his mother as well as his father, 351 pl. 24

A. tenant in tail, with remainder to *B.* in fee, levies a fine; *B.* dies his heir within age; *A.* dying without iſſue, *B.*'s heir may have his action at any time either before, or within the five years after, he is of age, 133. pl. 2

When the conuſee ſuing upon a fine ſent by *mittimus* out of chancery into B. R. dies, a freſh *mittimus* muſt iſſue to authorize the Court to proceed to execution for the heir, 29. pl. 196

No averment can be made that the conuſor of a fine died before the *teſte* of the *dedimus poteſtatem*, 89 pl. 1

In

In *quid juris clamat*, upon a ſuggeſtion that the defendant has a defence, but from age and infirmity is not able to travel, a *dedimus poteſtatem* may be granted to one of the juſtices of C. B. to go to him and receive an attorney to appear and plead for him, 135. pl. 15

A judge of aſſize by virtue of a general patent to receive fines with a *non obſtante*, took the acknowledgment of a fine without a *dedimus poteſtatem*, and holden good, though the chief juſtice of C. B. alone hath regularly ſuch power, 224. pl. 31

In *quid juris clamat* the tenant attorned as to part, and claimed part in fee, yet the fine of the whole was ingroſſed; but in *per quæ ſervitia*, where it was found that one tenant *non tenuit &c.* it was ingroſſed only for the reſidue, 212 pl 35

The Court will not ſtay the paſſing and ingroſſing of a fine after the King's ſilver is entered, though it was levied by an infant *feme covert*, who is ſince dead, 220. pl. 15

Where lands lying in different counties are compriſed in one concord the fine *pro licentiâ concordandi* ſhall be one entire fine for the whole, 227. pl. 44

A *feme ſole* having acknowledged a fine before commiſſioners, married before the day *in banc*, ſtill the fine is good 246. pl. 68

After the King's ſilver duly entered, if the conuſee die the fine ſhall be ingroſſed, but without the proclamations required by 4 H. 7. c. 24. for the party cannot now elect to have it under that ſtatute, 254. pl. 104

In *quid juris clamat*, if the termor claim a fee the conuſee ſhall have judgment to ſue for the ſeiſin, and have the fine ingroſſed if he pleaſes, 209. pl. 21

The preſent form of entering the proclamations of a fine did not commence till the ſixth year of H. 7. 256. pl. 9

Proclamation of a fine made before the *quarto die poſt* of a return in the middle of a Term is good, the Court then ſitting; but *quære* of the firſt return, as the Juſtices do not ſit till the *quarto die poſt*, 270. pl. 21

If the conuſee of a fine refuſe to take according to the uſes expreſſed in the indenture, the fine ſhall be to the uſe of the conuſor, 157. pl. 29

A. levies a fine *come ceo* to *B.* who renders back to *A.* in tail, remainder to himſelf in fee: on the death of *A.* without iſſue, *B.* is driven to his *formedon*, he cannot have a *ſcire facias* in the remainder, becauſe his eſtate is a reverſion, nor in the *reverter*, for it is a fine executed, 199. pl. 55

In error in B. R. to reverſe a fine in C. B. only a tranſcript of a fine is removed till the reverſal, 89. pl. 1

If a man ſettle land to the uſe of himſelf in tail, remainder to his own right heirs, and die, leaving iſſue a daughter only, who levies a fine and dies without iſſue, and *J. S.* brings error as couſin and collateral heir of the daughter, he ſhall not reverſe that fine, 89. pl. 1

If one of the proclamations of a fine be ſtated to have been made on a day out of Term, or on an impoſſible day, it may be avoided by pleading; but if ſtated to be on a day in Term, which day was a *Sunday*, it muſt be reverſed by error, 181. pl. 52

If any proclamation of a fine levied by tenant in tail be made out of Term, that proclamation alone ſhall be reverſed, but the fine ſhall ſtand and be a diſcontinuance, 216. pl 54

See ANCIENT DEMESNE, BARON AND FEME, CHESTER, JOINDER IN ACTION, MORTMAIN, SCIRE FACIAS.

FORCIBLE ENTRY.

Though a traverſe be tendered to an indictment for forcible entry, it is ſtill in the diſcretion of the Court to ſtay or grant reſtitution according to the truth of the title, 122. pl. 26

He who has had three years poſſeſſion being expelled, and reſtored by an indictment on 8. H. 6. c 9. cannot juſtify keeping poſſeſſion with force under that ſtatute, 141. pl. 48

If the lawful poſſeſſor for twenty years be once clearly removed, he may not forcibly regain poſſeſſion under the ſame, 141. pl. 48

Whether a widow during her quarantine may defend the poſſeſſion with force, 161 pl. 44

If a termor be expelled with force, the reverſioner cannot maintain an action on 8. H. 6. c. 9. 142. pl. 48

FORESTS AND PARKS.

The patentee of the herbage of a foreſt may incloſe, or diſtrain, or have treſpaſs for damage done to the graſs, but not to the trees or fruit, 285 pl 40

See BONDS, PURPRESTURE.

FORFEITURE.

Whether the acceptance of a fine *ſur cognizance &c.* granting and rendering back an eſtate for years is a forfeiture of a life-eſtate, 148 pl. 79

Within the ſix weeks after conviction on 1. El. c. 2. defendant died, Whether his executors ſhall be charged with the forfeiture, ſince by ſect. 12. he might have elected to ſuffer impriſonment in lieu thereof, 231. pl. 4

If the coroner find a *fugam fecit* in his inquiſition of murder, the party ſhall forfeit his goods, though he be acquitted both of the murder and the flight by the jury at his trial, 238 pl. 36

Leaſe for years, conditioned, that if the leſſor grant the reverſion the leſſee ſhall have the fee. In *quid juris clamat* by the conuſee of a fine levied by the leſſor, if the termor claim the fee it is a forfeiture, 209 pl. 21

A debt on ſimple contract is not forfeited with the goods and chattels of a *felo de ſe*, 262. pl. 31

A grantee of the forfeitures of traitors before 25 E. 3. is not affected by that ſtatute, which is only explanatory of the King's right to them, nor by 26 H. 8. c. 13. on account of the fifth ſection ſaving the rights of ſtrangers, except in thoſe forfeitures which were made ſuch by that ſtatute. And for new treaſons created ſince the grant he has no right to the forfeitures, 289. pl. 55

A. makes a feoffment to the uſe of himſelf for life, and after his deceaſe to the uſe of his executors and aſſigns for twenty years, remainder over, and afterwards is attainted of treaſon, and dies inteſtate without aſſignment; the crown ſhall not have the term, for *C.* had no intereſt in it to forfeit; but if he had not been attainted his executors ſhould have had it by purchaſe, 309. pl. 76

A. and his wife donees in tail, the reverſion in the King, *A.* having iſſue is attainted of treaſon, the entail is forfeited, for the iſſue muſt convey through both, 332. pl. 27

A. tenant for life, remainder to *B.* for life, remainder to *C.* in tail, remainder to *B.* in fee, if *A.* and *B.* join in a feoffment by deed, it is a forfeiture of both their life eſtates, and *C.* may enter immediately, 339. pl. 44

One being bound with ſureties in 40l. payable at two days, ſold them twenty oxen for 40l. by indenture, to be void if he indemnified them from the penalty, he to continue in poſſeſſion at the will of the ſureties, nothing being paid on the firſt day, and the vendor committing ſuicide before the ſecond, the beaſts or the money are forfeited to the King, but the ſureties muſt be diſcharged againſt the debtee, 160. pl 44

See ATTAINDER, CONDITION, OFFICE, STATUTES.

FORGERY.

If one writing a ſick man's will inſert a clauſe, without previous direction, after he is ſpeechleſs, it is not forgery within 5. El. c. 14. 288. pl. 52

Forgery of a will, by which a leaſe is deviſed, is within 5 El c. 14. 302. pl 45

Forging the cuſtomary of a manor, which tends to the diſheriſon of the lord, and affixing ſeals to it, is within 5. El. c. 14. 322. pl. 26

The execution for double coſts and damages under 5. El. c. 14. is by *Engliſh* writ directed to the ſheriff *of the goods and chattels and profits of the lands* of the offender. 323. pl. 28

See DAMAGES.

FORMEDON.

Formedon againſt three, two confeſs, the third pleads to iſſue, demandant ſhall not have judgment againſt the two till the iſſue be tried, 6. pl. 4

If in *formedon* the tenant and vouchee both make default after the ſummons to warrant is returned ſerved, demandant ſhall have a *petit cape* againſt the tenant, though he has no remedy over againſt the vouchee, 24. pl. 152

Land given to father and ſon, and to the heirs of their two bodies, remainder over, the father dies and the ſon diſcontinues, or a ſtranger abates, he in remainder need have but one *formedon*, 145. pl. 64

A *formedon* in the remainder cannot be maintained without alleging *eſplees* in the particular tenant, 140. pl. 41

In a *formedon in reverter* the donor need not name the iſſue of the donee, but ſay *quæ poſt mortem* of the donee without iſſue &c.; *ſecus* in the *deſcender*, where he muſt name the heir laſt ſeiſed. *Quære* in the remainder, 216. pl. 56

Where lands are given to *A.* and to the heirs of the body of his father, in a *formedon in deſcender* brought by the ſon of *A.* he muſt entitle himſelf as couſin and heir to his grandfather; for it may be that *A.* was a younger ſon, 247. pl. 75

Formedon in deſcender is out of the ſtatute of Limitations, 32. H. 8. c. 2. nor was ever within any of the old ſtatutes for limiting actions, 278 pl. 2

So *in reverter* or *remainder*, and ſo in *ſcire facias upon fines*; and therefore the writ or count need not allege ſeiſin within fifty years, 315. pl. 101

A. tenant in tail, remainder to *B.* and *C.* in tail. The heir of *B.* in *formedon* need not expreſsly aver the death of *C.* but "*quæ poſt mortem* of *A. B.* and *C.* "*&c. eò quòd A.* died without heir of "his body," is ſufficient, 349. pl. 17

In *formedon* againſt *baron et feme* after eſſoin caſt, though the *feme* alien her right, ſtill on default by the huſband ſhe ſhall be received to defend, as ſhe had right when the writ was purchaſed, 315. pl. 1

In *formedon* againſt three, though two confeſs the action the third may plead joint-tenancy with one of them, and traverſe the other's having any thing in the land, 6. pl. 4

See ABATEMENT, ERROR, FINE.

FRANCHISE.

See ESTRAY.

FRAUD,

See CONVEYANCE.

FUGITIVE.

Departing the realm for the ſake of living out of due obedience to the laws is no offence, unleſs there has been expreſs reſtraint by writ or proclamation, 296 pl. 19

But if a ſubject refuſe to return upon the King's mandate, his lands and goods ſhall be ſeized to the King's uſe, 128 pl. 61

See PREROGATIVE.

G.

GAOL.

See PRISON.

GAVELKIND AND BOROUGH-ENGLISH.

Gavelkind land being deviſed to an huſband and wife for life, remainder to the next heir male of their bodies lawfully begotten, Whether the eldeſt ſon ſhall have the whole, or all take by the cuſtom, 133. pl. 5

A man makes a feoffment of borough Engliſh lands to deſcend in tail according to the courſe of common law, ſtill the youngeſt ſon ſhall inherit, and not the eldeſt, 179. pl. 45

Gavelkind land deviſed to the eldeſt ſon on condition that he pay 100l. *If* he do not pay, Whether the youngeſt may enter upon a moiety, 316. pl. 5

See ANCIENT DEMESNE, JOINTENANTS.

GRANT.

Whether the grant of the office of ſteward of the court of augmentations, ſealed only with the great ſeal, is good by 27. H. 8. c. 27. 50. pl. 1

A grant by the King to an alien that he ſhall pay only *Engliſh cuſtoms* binds his heirs and ſucceſſors, though they be not named in the grant, 92. pl. 17

But *quære* of a licence to export beer *non obſtante &c.* unleſs they are expreſsly named, 32. pl. 17.

Grant by the King of an annuity for life, *to be received at the receipt of our exchequer*, is good during the life of the King, but does not bind his ſucceſſors without expreſs words, 92. pl. 19

The grantee of a manor *dum ſola* grants a rent-charge out of it, and afterwards the reverſion of the manor deſcends upon her, and ſhe marries, Whether ſhe may avoid it, 141. pl. 44

The King grants a foreſt for years to *A.* who covenants to keep one hundred deer there, and to leave one hundred there at the end of the term, a grantee in fee cannot kill or give warrant for any deer there during the term, 169. pl. 1

By the grant of a foreſt the game paſſes, 169. pl. 1

The King grants to one to ſell wines *non obſtante ſtatuto* without limitation of time,

time, but in the patent commands his officers to permit it for his life, this is only a grant during pleasure, and determines on the death of the King, 270 pl. 22

A termor grants all his term and interest to *B. habendum* to him after his death, the whole interest passes immediately, and the *habendum* is void, 272. pl. 30

Grant by charter to the corporation of *L.* of "all fines and amerciaments for all "offences of all persons resident in *L.* "in the court of either bench, chan-"cery, exchequer, and all courts of "the King, and before whatsoever "justices sitting and giving judgment, "which would belong to the King if "not granted," passes the fines for temporal offences only, but no right to a fine assessed by commissioners of oyer and terminer of ecclesiastical causes 269. note (*a*)

The King having a rent out of a manor whereof *A.* and his wife are jointenants, "gives, grants, remits, releases, and re-"nounces the rent, *habend. et percipiend.* "to *A.* and his heirs," this is either a grantor extinguishment at the election of the patentee, 319. pl. 16

If the King grant in consideration of the surrender of a prior lease, and it be only a surrender in appearance, the grantee not having interest in the whole, the King was deceived, and may avoid this grant, though made *ex certâ scientiâ*, 352. pl. 26

A grant by *Queen Eliz.* of a manor and all woods *heretofore* known as parcel thereof, passes one that was parcel in the time of Ed. 6. though not of a longer time back unless the words had been *ever heretofore*: but such grant of a subject would not need the word *ever*, 362. pl. 17

Before 13. El. c. 3. the Queen granted a manor of a fugitive (seized for not returning after licence determined by her privy seal) for as long as it shall remain in her hands: after that act and 14. El. c. 6. she seizes it again, and one as her steward grants a copyhold; this is void, for the first patent remains good, and that patentee alone may keep courts and grant copies, 375. pl. 21

See ANNUITY, CHURCH, INROLLMENT, MANOR, OFFICE.

H.

HEIR.

If *A.* make a feoffment to the use of his wife for life, remainder to the heirs of their two bodies begotten, the issue cannot enter during the life of *A.* 99. pl. 64

That the obligor made executors and died, and that they have assets, is no plea by the heir to an action of debt on the bond of his ancestor, 204. pl. 2

A purchaser of land in fee dies without issue, his mother has a brother, so has his grandmother *ex parte paternâ*, this shall be the heir, and not the maternal uncle, 314. pl. 95

A. having two sons binds himself and his heirs and dies, the eldest enters on his land and dies, the youngest entering shall be charged as heir, and so shall his grandson, 368. pl. 46

See ASSETS, ATTAINDER, ATTORNMENT, DESCENT, ESTATE, ESTOPPEL, EXECUTION, JUDGMENT.

HERIOT.

A custom that the lord may seize the beasts of a stranger *levant et couchant* upon his tenant's land by way of heriot if the best beast of such tenant be eloigned at his death, or he die without beast, is bad, 199. pl. 57

In justifying under a prescription for a heriot, defendant must plead that he seized for or in the name of an heriot, 199. pl. 57

Tenant by heriot custom holding of several lords makes a fraudulent gift of his beasts, any lord may sue on 13. El. c. 5. for the value of all the beasts, 351. pl. 23

HUE AND CRY.

Two being robbed of a joint sum of money may join against the hundred on the statute; *secus* if the property were several, 370. pl. 59

The hundred to excuse themselves must apprehend the felons, or describe their names so that they may be indicted and outlawed, 370. pl 59

HUNDRED.

See HUE AND CRY, JURORS.

I.

IDIOT.

See COPYHOLD.

IDEMPTITATE NOMINIS.

Lies where there are two of the ſame ſirname, but not for two names of baptiſm, 5. pl. 4

JEOFAIL.

Covenant by an adminiſtrator; releaſe from the inteſtate pleaded; replication, natural ideotcy of the inteſtate, whether it is a jeofail, 112. pl. 52

Trial in *formedon* between the vouchee and demandant is within the ſtatute of Jeofails, though they are not both parties to the writ. 188. pl. 11

In waſte by pulling up a copper fixed to the ſoil by the leſſee. Plea a deviſe thereof by the leſſee, iſſue on the deviſe is a jeofail, 272. pl. 33

An information for uſury commenced in C. *B.* by *ſubpœna* is aided by the ſtatute of Jeofails, 346. pl. 9

See TRIAL.

IMPARLANCE.

After a ſpecial imparlance a view cannot be had, nor jointenure or non-tenure pleaded, 210. pl. 27

IMPROVEMENT.

See MANOR.

INDICTMENT.

Indictment *ſuper viſum corporis*, that the ſaid *Emma* was in the peace &c. *until the ſaid A. the huſband of the ſaid Emma* of *H.* aforeſaid, in the county aforeſaid, yeoman, &c. is good, without *late the huſband*: and the addition of yeoman, though *Emma* be the next antecedent, muſt be referred to the huſband, 46. pl. 2

Indictment for aſſaulting *A.* at *D.* and murdering him, without ſtating a place of the murder, or *adtunc et ibidem*, is bad, 68. pl. 28

So, "*Berks, an inqueſt there taken on "ſuch a day,*" without naming any place in certain, is bad, 68. pl. 28

The word *murdered* in an indictment implies malice aforethought, 68. pl. 28

For *burglariouſly breaking open a church by night to ſteal the goods of the pariſhioners* is bad, for want of the words *and entering*; but it is burglary, 99. pl. 58

Indictment for taking the goods *cujuſdam ignoti* is good, 99. pl. 61

Whether *ſtruck* muſt be in an indictment for murder, 99. pl. 63

5. and 6. Ed. 6. c. . enacting, that the quarter ſeſſions of *Angleſea* ſhall be holden at *Beaumaris* only, and not elſewhere, an indictment taken at a ſeſſions holden elſewhere is void, 135. pl 14

Indictment for *reſcous*, ſtating that one on the 15th of *February*, &c. committed felony, whereupon *A. B.* at *H.* aforeſaid arreſted him, *et adtunc & ibidem* had and kept him in cuſtody until defendant *adtunc et ibidem* reſcued him; Whether the time of the arreſt, and alſo of the reſcue, be laid with ſufficient certainty, 164. pl. 60

In an indictment againſt the acceſſary on 4. and 5. P. & M. c. 4. the word *maliciouſly* is neceſſary, or the offender ſhall have his clergy as he might before the ſtatute, 183. pl. 59

An indictment for an aſſault upon *John*, pariſh-prieſt of *D.* without adding the ſurname, is good; and if defendant be again indicted with the ſurname added, he may plead the former verdict, and aver it to be the ſame perſon, 285. pl. 38

Without the word *murdravit* in an indictment for homicide the charge amounts but to manſlaughter, 304. pl. 56

An indictment on 1. El. c. 1. §. 27. muſt ſtate the offence to be *with intent to ſet forth and extol the authority &c.* and *contra formam ſtatuti* does not aid the defect, 363. pl. 25

See SLANDER.

INFANT.

A recovery in *dum fuit infra etatem* againſt an infant by default after default may be reverſed for nonage; and he may aſſign the nonage for error, without averring that he had the land by deſcent, 104. pl. 10

If an infant bind himſelf in a ſtatute ſtaple he muſt ſue *audita querela* during his nonage, for after full age he ſhall not have it, 232. pl. 9

An

An infant ſuing by *prochein amy* on nonſuit ſhall not be amerced; *ſecus* if on coming of age he make attorney, 338. pl. 41

See DISSEISIN, OUTLAWRY, PAROL DEMUR.

INFORMATION.

See MISRECITAL.

INNKEEPER.

Evidence of refuſal by an innkeeper to admit on account of his houſe being full, but that plaintiff inſiſted to make ſhift among other gueſts, will ſupport a plea that the plaintiff's goods were not ſtolen through default of the defendant or his ſervants, 158. pl. 32

In an action againſt an innkeeper for goods of his gueſts loſt in his houſe, the declaration muſt ſhew that he kept a common inn, 266. pl. 9

If an innkeeper require his gueſt to lock up his goods in ſuch a chamber or he will not warrant their ſafety, and the gueſt ſuffer them to lie in an outer court; the hoſt is not liable if they are ſtolen, 266. pl. 9

INQUEST OF OFFICE.

Upon an office ſtating *de quo vel quibus tenementa tenentur vel per quæ ſervitia juratores ignorant* found before ſtat. 2. E. 6. c. 8. a *melius inquirendum* ſhall not iſſue, but the party be put to his traverſe, 155. pl. 22

If the heir be found by office fifteen years old, and when he is twenty is falſely found of full age by *ætate probandâ*, the King is without remedy; where it is found that he is of fewer years than in truth he is he may traverſe it, or when he comes of full age may have an *ætate probandâ* by the ſtatute, 155. pl. 22

Office found by the inqueſt, though put on paper, is not complete till indented, ingroſſed, and ſealed, 170. pl. 2

An office returned taken in *B* of lands in *H.* without ſhewing in what county, is inſufficient, 208. pl. 19

Where three *inquiſitiones poſt mortem* varied from each other in their returns as to the tenure, holden that the heir needs not traverſe the two laſt, as the firſt muſt be allowed, though againſt the King's intereſt, until diſproved by *ſcire facias*, 248. pl. 81

When office finds tenure of the King *ſed per quæ ſervitia juratores ignorant*, and a *melius inquirendum* therefore awarded, the firſt office needs not be traverſed, it is wholly void, 292. pl. 71

If an office only find that knight ſervice land is conveyed in tail to *A.* by the King's tenant, the attorney general may ſupply the defect by averring that *A.* is ſon to the donor, 297. pl. 23

But ſee the note *contra*.

An office finds *A.* the youngeſt ſon of *B.* coheir with others, this will not give him right as heir, 302. pl. 43

See TENURE.

INROLMENT.

By a proviſo in an act leaſes inrolled and ſealed within one year before the act paſſed ſhall be good, whether a leaſe accordingly inrolled a few days before, but the exemplification bearing date the firſt day of the ſeſſions, is within the proviſo, 80. pl. 61

A deed of grant of lands to Ed. 6. was acknowledged before a maſter in chancery, and delivered to be inrolled, but only put into a cheſt—the lands do not paſs, nor will inrollment now, veſt them in Queen Eliz. 355. pl. 37

See BARGAIN AND SALE.

JOINDER IN ACTION.

An action will not lie by two jointly againſt defendant for calling them two falſe thieves, 19. pl. 112

Upon a verdict on 8. H. 6. c. 9. that all the defendants forcibly entered, diſſeiſed, and expelled, and one of them only held out, may all join in attaint upon the three firſt points, and the other may have his attaint ſole upon the detainer, 141. pl. 45

The conuſor of a ſtatute enfeoffs the conuſee of part of his land, and his ſon and his ſon's wife for jointure of the reſt, the conuſee having ſued execution on the ſtatute againſt the ſon, his wife need not join him in *audita querela* brought on account of the feoffment, 193. pl. 30

Whether huſband and wife may join in treſpaſs in the lands of the wife *dum ſola*, laying it to the damage of both, with a *continuando* of depaſturing until the day of ſuing out the writ, 305. pl. 59

On

On error to reverſe a fine the terre-tenants ſhould be made privies by *ſcire facias*, as they may loſe the land; 320. pl. 19

Two being robbed of a joint ſum of money may join in an action upon the ſtatute of *Winton*; *ſecus* if the property were ſeveral, 370. pl. 59

JOINTENANTS, TENANTS IN COMMON, AND COPARCENERS.

Whether a deviſe of a term to two equally makes a jointenancy or a tenancy in common, 25. pl. 158

If land be releaſed to *A.* and *B.* for their lives jointly, and for the life of the longer liver, and to the aſſigns of him who firſt dies, during the life of the ſurvivor, Whether the word *jointly* precludes them from making partition, and Whether he who firſt dies can aſſign his moiety, or the entiret during the life of the other. If there be no aſſignment the ſurvivorſhip takes place, 46. pl. 7

Two coparceners of an advowſon, the younger in ward, the guardian marrying her ſiſter preſents to the advowſon in the name of both: Whether upon the next avoidance, after the ward is of age, the eldeſt ſhall preſent if the other refuſe to join, 55. pl. 5

Two jointenants for life, one leaſes his moiety for years rendering rent and dies, the term continues, but the rent is gone, 187. pl. 5

A. levies a fine to the uſe of himſelf and ſuch wife as he ſhould marry, and then marries, his wife takes an eſtate in jointtenancy with him, 274. pl 42

A. leaſed for years, and then deviſed the land to *B.* and to his ſiſter, and the heirs of every of their bodies, they have ſeveral inheritances, 326. pl. 1

After 27. H. 8. *A.* made a feoffment to the uſe of his wife, and if he ſurvive her to the uſe of himſelf and ſuch woman as he ſhall afterwards marry, for the term of their lives, remainder to *B.* ſuch ſecond wife ſhall take in jointenancy with him, though they come to their eſtates at different times, 339. pl. 48.

Leaſe to two, *halendum* to them for their lives, and the life of the longeſt liver, ſucceſſively, one after the other, and not jointly, is no jointenancy, but they muſt take in ſucceſſion, 361. pl. 8

If a parcener have leaſed her ſhare, and upon a writ of partition too little be allotted her, the leſſee hath no remedy; *ſecus* perhaps on partition without writ, 52. pl. 20

Whether a new writ of partition can be awarded if the ſhares be unequally diſtributed by the ſheriff upon his former writ, 73. pl. 7

In a writ of partition brought by a huſband and wife, declaring that the wife is coheireſs with the defendant in tail, they need not ſhew the commencement of the eſtate, 79. pl. 51

To ſuch writ of partition ſpecial baſtardy is a good plea, without traverſing the coparcenary, and the trial ſhall be where the birth is alledged, 79. pl. 52

So it is a good plea that defendant has already the ſame writ againſt the plaintiff, and judgment of partition ſtill unexecuted upon it, 92. pl 21

Partition being made by deed before 31. H. 8. c. 1. between the alienee of one coparcener in tail and *A* the other coparcener, if it be unequal the iſſue of *A.* may defeat it. *Qu.* if equal, 98. pl. 54

A purchaſer of the ſhare of one parcener cannot join in a writ of partition with another of the parceners, 128. pl. 58

Whether jointenants may make partition by parol, and out of the county where the land lies, 179. pl. 43

If of three coparceners one alien, no writ of partition lies upon the ſtatute by the others, becauſe they have a writ at common law: if both join in the writ againſt the alienee, and one is nonſuited, ſtill ſhe ſhall be ſummoned and ſevered, and her part ſet out as well as the reſt. If of three the eldeſt purchaſe the part of the youngeſt, or if her huſband do, the writ lies for them at common law againſt the other, 243. pl. 55

One tenant in common of a manor purchaſes freehold lands ſo intermixed with the demeſnes as not eaſily to be known. On a writ of partition againſt him he is to ſhew to the jury the bounds of his freehold; but if no one ſhew them, and they make partition as well as they can, it is ſufficient, 265. pl. 5

Deviſe to two in tail, who by parol make partition, this is void, and the ſurvivor ſhall take the whole; *ſecus* if they had only a term, 350. pl. 2

See ENTRY, GAVELKIND.

ISSUE.

On iſſue whether a demiſe was made by *T. W. Lord W.* the dignity is parcel of the iſſue; and if he was not a lord at the time of the demiſe it muſt be found againſt the party, 299. pl. 35

In aſſiſe for two acres, pleas to each ſeverally, the plaintiff makes ſeveral titles, and joins iſſue by *veniat aſſiſa ſuper titulo* in the ſingular number, this is well enough, and ſhall be referred to each, 325. pl. 40

JUDGMENT.

On default of the vouchee after the miſe joined upon the mere right, judgment ſhall be final againſt the vouchee and tenant, and the heirs of both, 56. pl. 17

Where defendant pleaded a releaſe by the plaintiff, and when iſſue was taken thereupon confeſſed the falſity of his plea, judgment was entered for plaintiff, with a *capiatur* as to defendant, 67. pl. 19

In a writ of right, if the tenant make default after the miſe joined, the jurors ſhall not be demanded, but final judgment given.—But whether demandant ſhall have ſeiſin without a *petit cape*, *quære*, 98. pl. 51

Whether the judgment upon 1. & 2. P. & M. c. 12. ſhall be againſt the defendant *quod capiatur* or *in miſericordiâ*, 177. pl. 73

A verdict being given on one iſſue for the plaintiff, and on another for defendant, defendant may enter judgment on that found for him, if the plaintiff will not on his, 194. pl. 34

And where defendant will not pray judgment on a verdict found for him, plaintiff may againſt himſelf for the purpoſe of attainting the jury, 194. pl. 34

One ſtanding mute, or not anſwering directly, on his arraignment for high treaſon, ſhall have judgment as if convicted, 205. pl. 4

Where one of two defendants in *ejectione firmæ* pleads an entry of the plaintiff, to which he demurs, there cannot be judgment againſt the other pleading only the general iſſue, which is found againſt him, 226. pl. 40

The judgment in treaſon for clipping the coin is to be drawn and hanged only, 230. pl. 55

In piracy, defendant ſtanding mute ſhall have judgment of *peine fort et dure*, 241. pl. 49

In *ejectione firmæ* for the *tithes*, *barn*, *and garden of a rectory*, judgment that the plaintiff ſhall recover *the rectory*, *barn*, *and garden*, and a writ of ſeiſin accordingly, and on enquiry of damages more returned than the plaintiff demanded, and judgment entered for that alſo, Whether this is error, or amendable, 258. pl. 16

Entry in the *quibus* againſt *A.* and *B.* verdict that *A.* diſſeiſed, but *B.* not, judgment ſhall be againſt *A.* for the whole, 312. pl. 85

Where judgment is againſt the heir on the bond of his anceſtor by *nihil dicit*, *non ſum informatus* or confeſſion, the judgment ſhall be general and aſſets preſumed, 344. pl. 1.

But if he confeſſes the bond, and ſhews that a reverſion only deſcended, judgment ſhall be of that *quando acciderit*, and a ſpecial writ to extend the whole land, 374. pl. 14

In *ejectione cuſtodiæ terræ et hæredis*, though it does not lie for the heir, if the jury aſſeſs entire damages the plaintiff releaſing them may have judgment for the land, 369. pl. 56

In a writ of right the tenant choſe trial by battle; but when every thing was prepared at the day and place appointed, the demandant made default, judgment ſhall be final againſt him, 301. pl. 40

See AMENDMENT, ANCIENT DEMESNE, DOWER.

JURY.

All perſons having 40s. freehold, or 100l. in chattels, are ſufficient *pares* for the trial of an eſquire for treaſon, 99. pl. 67.

There muſt be ſixteen jurors of the grand aſſiſe with the four knights, 98. pl. 51

An alien tried for high treaſon ſhall not have a jury *de medietate*, 144. pl. 59

The jury *de medietate* muſt be prayed before any of a common jury be ſworn, 304. pl. 51

And before any *venire* awarded, 357. pl. 45

When the panel in the grand aſſiſe is returned, the proceſs is a *venire facias* with the names of the jurors inſerted, in the nature of an *habeas corpora*, 270. pl. 24

The

The Court will award proceſs in the next hundred, upon the ſuggeſtion of counſel that there are not ſufficient freeholders in the hundred; but that muſt be returned by the ſheriff, 25. pl 156

In a writ of right, if, after ſervice of the writ of ſummons, all the knigh's do not appear, an *hab. cor* ſhall be awarded to the ſheriff to have them at a day certain, 79. pl. 50

One of the four knights being challenged in *banc*, and withdrawn, an *alias ſummons* awarded for another, and *habeas corpora* for the reſidue, 103. pl 9

Array made by a former ſheriff being quaſhed for coſinage, plaintiff may have a *ve. fa. de novo* to the new ſheriff, or to the coroner, at his election, 188 pl. 11

Upon the *diſtringas* in attaint the ſheriff impanelled the jury, but did not return them till the eſſoin day of the return next following that of the writ: and though both parties requeſted the Court to take them, the jury were diſcharged, and the ſheriff amerced, 198. pl. 52

After iſſue joined the King died, and a precept was made to the ſheriff, without writ or *teſte* of the chief juſtice, to re-attach the defendant, and a *habeas corpus* againſt the jury, and holden good in B. R. 118. pl. 78

A *venire facias cum proviſo* is not grantable to the defendant but where he is actor, or there are laches or default in the plaintiff, yet one laches ſuffices for the whole ſuit: but if, after defendant hath ſued that out, the plaintiff ſue out a *venire facias*, which is ſerved, and not defendant's, he ſhall not have a *habeas corpora cum niſi prius cum proviſo* without freſh laches, ſince none at all appears on the record, 215. pl. 15

In challenging for conſanguinity there muſt be an averment that the ſheriff was of kin at the time of arraying the panel, 34. pl. 46

Labouring a juror who was not ſummoned, to appear and give a verdict according to his conſcience, is no cauſe of challenge, 48. pl. 19

In an information upon 21. H. 8. c. 13. where the farms lie in ſeveral hundreds, if four of the jurors have not lands, nor live in any of the hundreds, it is good cauſe of challenge, 61. pl. 32

Challenge to the array, becauſe the wife of the ſheriff, having iſſue by him ſtill alive, was related to one of the jury, is bad, without averment that ſhe was his wife before the arraying of the panel, and that he was ſheriff at the time of the panel; but the place where the iſſue is alive need not be alleged, 91. pl. 14

If an exemption of the vill be pleaded within time of memory in a challenge to the hundred, it muſt be ſhewn how exempted, 100. pl. 69

Where a peer is defendant, it is good cauſe of challenge that no knight is on the panel, 107. pl. 27. 208. pl. 18

But the plaintiff at the *diſtring. jurat.* perceiving this defect might not pray a *venire facias de novo*, 265 pl. 4

If the juror reſide in the plaintiff's leet it is a principal challenge, although no tenure, for he is within the diſtreſs, 176. pl. 27

On a falſe return of a panel by a ſheriff, that it was arrayed by his predeceſſor, the party may challenge it for coſinage, notwithſtanding the return, 177. pl. 34

If the meſſenger by whom the ſheriff ſends the panel change ſome of the jurors at the plaintiff's requeſt, it is not cauſe of challenge to the array, but to the polls only, 182. pl. 56

Plaintiff cannot relinquiſh his challenge of a juror upon his being challenged by the defendant alſo, 198. pl. 51

In attaint, two of the petit jury challenged the array which was tried againſt them, others challenging the polls muſt ſhew cauſe immediately, 201 pl. 65

He that challenges for the hundred muſt ſhew in what hundred the place is, and not drive the other party to ſhew it, 231. pl 3

A juror challenged by one defendant upon a joint *venire* againſt two indicted for the ſame offence, may yet be ſworn and ſtand againſt the other, 152. pl. 8

Where ſeveral defendants in *replevin* are at ſeveral iſſues, and but one *venire* is awarded, a challenge to the array by one is good for all, 246 pl. 70

The ſuggeſtion to have a writ to the coroners ought to be of a principal challenge, and not of favour, 300. pl. 35. 367. pl. 40.

It is not a principal challenge in *ejectione firmæ* that the ſheriff is couſin to the leſſee of the plaintiff, 300. pl 35

Nor

Nor that the plaintiff and ſheriff are both of the liveries of the ſame nobleman, 367. pl. 40

Whether a juror who was not an hundredor at the return of the *venire facias*, but became ſo before the day of trial, may be challenged for the hundred, 315. pl. 3

If the demandant or tenant be created a peer after the return of the *venire facias*, want of knight is no cauſe of challenge, 318. pl. 10

A lord of parliament ſhall not be impanelled without ſpecial neceſſity or command of the King, 315. pl 58

In a cauſe for the lands of the wife, couſinage of the ſheriff in the ninth degree to the huſband is a good principal challenge to the array, 319. pl. 13

At the return of an *habeas corpus cum proviſo* plaintiff may challenge the array if there be cauſe, 319. pl. 13

The manner of couſinage alledged in the challenge is not traverſable, 319. pl. 13

In attaint the grand jury were returned ſummoned, by the ſheriff, who was related to one of the petit, but the re-ſummons, diſtreſs, and tales, were returned by a new ſheriff. The grand jury being quaſhed, the tales were quaſhed alſo, 78. pl. 41

A tales of ſixty awarded in appeal of robbery, 213. pl. 43

In appeal of robbery ſeventy five jurors returned on the panel, 213. pl. 43

Where one juror appeared, and his appearance was recorded, and he not being diſcharged by challenge or other reaſonable excuſe was ſworn of another jury, Whether a taleſman may be added to ſupply his place and make up the number of the firſt jury, 158. pl. 31.

Where two hundreds only appear on the firſt panel, the tales for default of hundredors need only conſiſt of two others, who ſhall be added to eight of the principal jurors not objected to, 200. pl. 61

One of the principal panel may be joined to eleven tales, or one taleſman to eleven of the principal, notwithſtanding 35. H. 8. c. 6. ſpeaks in the plural number only, 244. pl. 64

Whether a trial may be by taleſmen only, 244. pl. 64

Defendant in replevin taking out a *venire cum proviſo* may pray a *decem tales* as well as the plaintiff himſelf, 193. pl. 28

Though the jury appear on a *habeas corpora cum proviſo*, ſtill defendant cannot pray a *tales* till the plaintiff make default in that alſo, 318. pl. 10

The juſtices of *niſi prius* may direct a *tales de circumſtantibus* to the coroners, 376. pl. 24

Whether all the hundredors of a jury may be returned on the tales and added to the principal panel, 338. pl. 42

If a full jury do not appear, and the plaintiff pray a *diſtringas* without praying any tales, the Court ought to grant it at the prayer of the defendant, 359. pl. 2

Jury fined for drinking between the time of their agreeing in the verdict and giving it into court, but the verdict not vitiated, 37. pl. 45

Jury eating at their own expence is not error, but only puniſhable by fine, 55. pl. 8

Juror fined in bank who at the aſſizes having eaten would not agree, though on being ſent back he afterwards did agree: and the verdict allowed, 218. pl. 4

Though the indictment on 5. El. c. 1. be found in *Middleſex*, the jury who try it ſhall be of the place where the oath was tendered, 234. pl. 15

Whether the jury may find a ſpecial act of parliament not delivered to them in evidence exemplified or otherwiſe, 239. pl. 40

The jury finding an indenture of bargain and ſale *verbatim* may find another joint conſideration for it which is not expreſſed in the indenture, 146. pl. 69

If the firſt juror be ſworn, and the reſt challenged, he ſhall chooſe a companion to try the polls with himſelf, 25. pl. 156

See ALIEN, LONDON, REPLEVIN, STATUTE, VARIANCE, VERDICT, WRIT OF RIGHT.

JUSTICES

Of peace may enquire of murder, becauſe it is a felony, 69. pl. 29

Juſtices of gaol delivery who have reſpited a priſoner, may in vacation, after adjournment of the ſeſſions, make order for further reſpite by the cuſtom of the realm, 205. pl. 5

Where juſtices write to the clerk of the

crown for a certificate of *autrefoits convict* under 34. & 35. H. 8. c. 14. they ſhall do it in their own names; but judges on the circuit in one county ſending to judges in another for a certificate of the attainder of a principal, to arraign an acceſſary, ſhould do it by writ in the King's name, 253. pl. 103

The juſtices ſhall not be fined under 13. H. 4. c. 7. without having had notice of the riot, 210. pl. 25

See APPEAL, FINE, MASTER & SERVANT, SUPERSEDEAS.

K.

KING.

See ATTAINDER, CHURCH, EXTINGUISHMENT, FUGITIVE, GRANT, MANOR, PREROGATIVE, QUO MINUS, SLANDER, TENURE.

L.

LANDLORD AND TENANT.

Debt lies for rent againſt the original leſſee of a term, though he have granted over parcel of the land, and his grantee have made a feoffment of that parcel, 4. pl. 1

But not for rent accruing after the aſſignment of his whole term, 247 pl. 77

Covenant by the *leſſor* that the leſſee *ſhall have hedgebote by aſſignment* of his bailiff ſhall not reſtrain the tenant's legal right to take without aſſignment; *ſecus* if the *leſſee* had covenanted *not to take without aſſignment*, 19. pl. 115

Leſſee covenants and grants to his tenant that he ſhall hold the land to him and his wife during the life of the leſſor: this is neither a ſurrender, nor a confirmation, but a covenant only, 273 pl. 34

The leſſor undertakes to his leſſee that he ſhall enjoy without the interruption of any perſon; if a ſtranger tortiouſly enter, an action lies on this ſpecial *aſſumpſit*, 328. pl. 8

See LEASE, RENT.

LEASE.

Leaſe of an abbey, "and all lands, meadows, paſture, *and the underwritten*, "with the appurtenances &c. *viz.* ſuch "a cloſe and ſuch a cloſe," the word *viz.* relates only to the underwritten, and all the other lands ſhall paſs by the expreſs words, 77. pl. 38

A prior and convent made a leaſe of the ſite and all the demeſnes of a manor for life, rendering rent: the King after the diſſolution made a leaſe of the manor for years *per nomen manerii*, the rent and the reverſion of the demeſnes paſs, 233. pl. 10

Leaſe of all my meadows in *D.* containing ten acres when I have twenty in *D.* all paſs, 80. pl. 56

Leaſe by *A.* by indenture, witneſſing that he, as ſurveyor-general of *H.*'s lands in *D.* demiſed &c. tenements in *L.* with rent and re entry reſerved to, and a clauſe of warranty from *B.* leaſed by both: Whether this be a good leaſe, 132. pl. 76

A. leaſes ten acres of his rectory for ten years, and afterwards makes a leaſe of the entire rectory to *B.* the ten acres paſs as parcel without attornment, and after the ten years *B.* ſhall have them, 349. pl. 18.

Whether by the reſervation of wood and underwood in a leaſe, the ſoil on which the wood grows be reſerved, 19. pl. 110

Timber trees and great woods being excepted in a leaſe do not include underwood or the herbage of the woods, 79. pl. 48

A leaſe by prior and convent, of a manor with the appurtenances, *and the rents of all tenements of the ſaid manor, tithes of corn, perquiſites of courts, and all other emoluments, the advowſon of the church there &c. excepted and reſerved*, the exception ſhall be taken to begin at the words *advowſon of the church*, and the leſſee ſhall have the perquiſites of the courts, 58. pl. 9

If a man demiſes "a houſe and ſhops "*except the ſhops*," this is a void exception, 264. pl. 40

Leaſe of forty ſeven acres, fifteen of which are in *A.* twenty in *B.* and twelve in *F.* when in fact all are in *F.* whether all ſhall paſs, 80. pl. 57

A leaſe for three years, and thoſe ended for other three years, and thoſe ended for other three years more, during all the life of the leſſor, is a leaſe for nine years only; *ſecus*, perhaps, had it been from three years to three years

years during the life with livery, 24. pl. 151

Where a man makes a leaſe for years, and afterwards makes another leaſe of the ſame land to commence before the expiration of the firſt term, the ſecond leaſe is void, 26. pl. 167

Leaſe for years by indenture, to commence from *Michaelmas*, ſubſiſting a former one, if the firſt leſſee purchaſe the reverſion the ſecond leſſee may enter at *Michaelmas*, 112. pl 49

Leaſe for years to two, *proviſo* that the leaſe ſhall be void if the leſſees die.—One dies, his executors ſhall have his part in the term during the life of the other: had the leaſe been *for their lives* the leſſor ſhould have it, 67. pl. 18

A leaſe for years made in one county will paſs lands in that and in another county alſo; *ſecus* of a freehold, as there muſt be livery in both, 246. pl. 71

A. leaſes for thirty-one years, and four years after the beginning of that term makes a new leaſe by theſe words: "Know that I, the aforeſaid thirty-one "years being completed, have demiſed "and granted all the premiſes &c. "*habend' et tenend'* from the day of the "making of theſe preſents, the term "aforeſaid being finiſhed, until &c." Whether this ſhall commence in computation till the expiration of the former leaſe, 261. pl. 28

Leaſe on the 8th of *May*, *habendum* for twenty-one years, *ex tunc. prox. ſequent.* on what day it ſhall commence, 286. pl. 43

Leaſe for twenty years to *A. B.* and *C. A.* and *B.* take a new leaſe to commence from the expiration of the firſt, or on the prior death of *C. C.* dies within the term, Whether the new leaſe muſt commence now, or may *A.* and *B.* elect to wait the efflux of the twenty years, 312. pl. 89

Diſſeiſor leaſes for life, rendering rent, the grants the reverſion to the diſſeiſee, who accepts the rent, this is a good confirmation, 30. pl. 207

If huſband and wife leaſe purſuant to 32. H. 8. c. 28. and then by act of parliament the land is ſettled to the huſband for life, with power to make leaſes for three lives or twenty-one years, he may make leaſes in reverſion during the firſt leaſe, 357. pl. 43

His guardian when the iſſue in tail was but one year old leaſed lands never before let, for twenty years, this will not be ſuch letting for twenty years before as will enable the iſſue in tail when of age to leaſe under 32. H. 8. c. 28. 271. pl. 28

Of a leaſe of abbey lands made within one year next before the ſtatute of Diſſolutions, to one who had another leaſe at the time of making it, 73. pl. 8

A leaſe made by a ſpiritual corporation within one year before the diſſolution, by 31. H. 8. c. 13. is void, 280. pl. 13

Leaſe by a dean with the aſſent of his chapter, and the ſeal of the chapter affixed, is good, if the dean alone be parſon in right of his deanery; *ſecus* if the dean and chapter together be parſons *impar-ſonee*, 40. pl. 1

If a biſhop leaſe to two, and by a ſecond leaſe let the ſame land to one of them, the ſecond alone being under the chapter-ſeal, Whether the firſt leaſe be void by the biſhop's death, 46. pl. 9

A leaſe was made by a parſon for forty years, confirmed by the dean and ordinary for twenty, Whether this be a good leaſe or not, 52. pl. 4

Leaſe for life by a biſhop, who grants the reverſion for years, which was confirmed by one of his chapters only, the other being diſſolved, Whether the continuance of tenant for life is a good attornment, or this grant ſhall be effectual as a new leaſe without attornment: alſo, Whether this confirmation by one chapter only be ſufficient, 58. pl. 7

The biſhop muſt confirm as well as the dean and chapter a grant of parcel of the prebend, or it ſhall not bind the ſucceſſor, 61. pl. 30

Leaſe for years or grant of a rent-charge by a parſon, to commence after his death, confirmed by the patron and ordinary, ſhall bind the ſucceſſor, 60. pl 30

A. the parſon made a leaſe for years duly confirmed, the patron having granted the next avoidance, the grantee's clerk at *A.*'s death hath the advowſon diſcharged of the leaſe; but if he die during the term, Whether the next incumbent ſhall hold it diſcharged of the reſidue, 72. pl 5

A leaſe made one year before the ſtatute of Diſſolutions of an abbey wood which had been ſold every twenty years to the country round is void, 77. pl. 40

A ſecond leaſe for fifty years, with re-entry for alienation without leave, being made by a dean and chapter, to commence after a prior leaſe in being, Whether the alienation of the ſecond leſſee before the end of the firſt term avoids the ſecond leaſe, 102. pl. 83

A leaſe for fifty years made by a college within one year before 31. H. 8. c. 13. to one who had a former leaſe ſtill in being, ſhall be good for twenty-one years, but for no more, 102. pl. 1

Leaſe by a prebendary with aſſent of the biſhop and dean and chapter &c. without calling the dean by name, and concluding, In witneſs whereof the parties aforeſaid &c. the ſeals of the biſhop and chapter being affixed, Whether this ſhall be a good confirmation to bind the ſucceſſor, 106. pl. 21

A leaſe made by a prior and convent before 31. H. 8. c. 13. reſerving uſual rent at two ſeveral feaſts in the year, whereof the firſt payment is not to be made till one year after the commencement of the leaſe, is not void under that ſtatute, 123 pl. 35

An abbot leaſes land for life, and afterwards leaſes the reverſion thereof, *habendum* the land from *Michaelmas* next after the firſt leaſe ended, for twenty-one years, this is a good leaſe of the land for ſo long, and the *habendum* and the premiſes ſtand well together. And therefore though the tenant for life die before attornment, yet the grant is good, the *habendum* ſhewing that it was intended as a leaſe of the land, and not as a grant of the reverſion, 124. pl. 40

After a grant of the next avoidance, if the parſon make a leaſe rendering rent, confirmed by the patron and ordinary, and afterwards the parſon be deprived for marriage, the grantee of the term preſenting the incumbent ſhall avoid the leaſe, 133. pl. 1

Wood belonging to an abbacy annually ſold in parcels, and the produce paid into the hands of the abbot, held to be for the purpoſe of hoſpitality within 31. H. 8. c. 13. §. 5. and a leaſe of it granted within a year before that ſtatute therefore void, 207. pl. 13

Leaſe for years of tithes by the provoſt of *W.* confirmed by the dean and chapter, but not by the patron and ordinary; the provoſtſhip by act of parliament is united on the death of the provoſt to the deanery; acceptance of rent by the dean is no confirmation of the leaſe, which is void by the provoſt's death, 239. pl. 40

On the grant of an advowſon to a biſhop and his ſucceſſors after the death of the preſent incumbent, a leaſe by the biſhop to commence when the advowſon falls in is void againſt his ſucceſſor if the incumbent ſurvive him, 244. pl. 60

The incumbent of a chantry made a leaſe in the time of H. 8. which the patron, who had only an eſtate-tail in it, confirmed; the King after the diſſolution may avoid this leaſe, unleſs a diſcontinuance or bar of the entail be ſhewn, 252. pl. 97

Leaſes made by the dean of *Wells* need not the confirmation of the King, or even of the biſhop; the act that erected the new deanery on the ſurrender of the old one, and gave the nomination of the dean to the King, enacting alſo that the new dean and his ſucceſſors might grant, demiſe, or depart with their poſſeſſions in the ſame manner as the ancient deans could whoſe leaſes only required the confirmation of the chapter, 273 pl. 35

If a biſhop have two chapters both muſt confirm his leaſes, or the ſucceſſor may avoid them; but if one be diſſolved, then the confirmation of the other ſufficeth, 282. pl. 26

A prebendary makes a leaſe for ſeventy years, the biſhop and chapter confirm *the demiſe aforeſaid quoad fifty-one years*, it is certainly good for that time, 338. pl. 43

To avoid a leaſe made by a convent within one year before 27. H. 8. c. 28. reſerving leſs than the accuſtomed rent, it muſt be expreſsly averred to be fraudulent, or it ſhall be intended good and *bonâ fide*, 341. pl. 52

If a parſon make a leaſe, which the biſhop confirms as patron and ordinary, but not the chapter, and afterwards the biſhop collate another, and then is tranſlated, this leaſe cannot be avoided during the lives of the biſhop and the incumbent who found the land charged, 356. pl. 42

Whether

Whether a leaſe made by a parſon, if he abſent himſelf for eighty days, is void *ab initio*, or only from the time of ſuch abſenting, 372. pl. 11

Grant of a manor by Ed. 3. to his ſon Prince Ed. and his heirs eldeſt ſons of the kings of England, to go inſeparably with the duchy of *C.* The prince died, and the manor eſcheated to the King, and deſcended to H. 8 who made a leaſe of it after the birth of Ed. 6. but he ſued out livery neither of the duchy or manor in the life time of his father, this leaſe is good, and king Ed. 6. could not avoid it, 94. pl. 30

A woman cannot avoid a leaſe made by her firſt huſband and herſelf of her land, if upon her marrying again before any day of payment her ſecond huſband accept the rent, 159. pl. 36

Leaſes in reverſion by the chancellor of the duchy of *Lancaſter*, with the uſual proviſo *ſi quis plus dare voluerit*, are void by the ordinances of that court; but where in ſuch a leaſe was ſaid, *the King with the aſſent of the counſel of the duchy leaſed*, although falſe, it is good, for leaſes granted by the *counſel* are excepted by thoſe ordinances, 232. pl. 7

Leaſe by tenant in tail for twenty years, to commence at next *Michaelmas*, is good, 246. pl. 69

Leaſe for forty years by huſband tenant for life and his wife, who had the remainder in tail, is void againſt her iſſue, 252. pl. 97

Leaſe to three at will, the leſſor by deed, but without livery, reciting a ſurrender of the leaſe at will, grants to them and their heirs, this is void, for it is no confirmation, the eſtate at will being determined, 269. pl. 20

A leaſe to a ſpiritual perſon contrary to 21. H. 8 c. 13. is not void, 358. pl. 47

Tenant in tail of the gift of the King leaſes for years and dies, his heir accepts the rent, and is afterwards attainted, the King is in by *reverter*, and ſhall avoid the leaſe notwithſtanding this acceptance of rent, 115. pl. 65

Tenant in tail before the ſtatute of Uſes made a feoffment to the uſe of himſelf and his heirs, and then made a leaſe reſerving rent, and after the ſtatute he died, this leaſe ſhall not be avoided by a grantee of the iſſue who aliened without entering, 51. pl. 17

Where the King after making a leaſe of lands for years, with the deodands, granted all deodands generally (not reciting the leaſe) to his almoner, and after the expiration of the leaſe made a new one like the former, the ſecond leſſee, and not the almoner, ſhall have the deodands, 77. pl. 37

The pariſh of *H.* extending into two counties of *B.* and *W.* leaſe of a cloſe of the name of *C.* in the pariſh of *H.* in the county of *B.* though in fact the cloſe was in *W.* is good; but where the name of the pariſh itſelf is miſtaken the leaſe is bad, 298. pl. 72

If the leſſor and the leſſee for life join in a leaſe for years, and after the death of the leſſee for life the termor commit waſte, the firſt leſſor may declare as on his own demiſe, 234. pl. 18

See DEPUTY, MISNOMER, MIS-RECITAL, REMITTER SURRENDER, VARIANCE.

LEGACY.

A legacy of money to his daughter for and towards marriage is an abſolute gift, and if ſhe die unmarried her executors ſhall have it, 59. pl. 15

A legacy to *B.* towards marriage, to be paid at the day of marriage, or at the age of twenty-one, does not veſt till one of the events takes places, 59. pl. 16

If a man bequeath a moiety of all his goods to his wife, to be divided equally between her and his executors, ſhe ſhall have a moiety of all he died poſſeſſed of provided aſſets remain, 164. pl. 57

Account will lie for a legacy to be paid out of the produce of land, but it cannot be ſued for in the eccleſiaſtical courts,

See DEVISE, EXECUTORS.

LETTERS PATENT.

Whether the leſſee of the grantee of the King, juſtifying in treſpaſs as ſuch, needs ſhew the letters patent, 29. pl. 199

The aſſignee of the King's patentee cannot plead the letters patent without a *profert*, 54. pl. 17

To an information for an intruſion letters patent pleaded without a *profert*, 115. pl. 66

Whether letters patent be good dated on the 1ſt of *December*, in the thirty-ſeventh year of H. 8. when the warrant to the chancellor was dated 31ſt *October* 37.

H. 8. and filed among the warrants of that year, but indorſed to be delivered on the 1ſt of *December* only, without any mention of the year of his reign, 133. pl. 3

The patentees themſelves of lands &c. granted to the crown, as well as purchaſers of parcels from them, are entitled to a *conſtat* of their letters patent under ſtatute 3. & 4. E. 6. c. 4. 167. pl. 13

Though a patent be ſurrendered, a *conſtat* is grantable if no *vacat* be entered on the roll, but not after *vacat* entered, 167. *margine*

Surrender of a patent to the maſter of the rolls, without its being recorded in his life, or the patent cancelled, or a *vacat* entered on the inrollment, is void, 195. pl. 35

Surrender of a former patent after the date of a ſecond, which was to commence from the date, will not make the ſecond patent good, 195. pl. 35

The patent appointing a receiver of the court of augmentations with condition, may be repealed without an office found of the breach of the condition; but it is not therefore merely void, there muſt be a *ſcire facias* to repeal it, 210. pl. 28

Where general words in the King's patents ſhall not have a ſpecial intendment, 269. pl. 18

Where the words *ex ſpeciali gratiâ et certâ ſcientiâ* in the King's patent ſhall have ſpecial intendments, 269. pl. 19

If the laſt patent be of fairs and markets holden at different times from thoſe under the firſt, it is no cauſe of repeal, 276. pl. 52

The ſtatute 34. H 8. c. 21. of miſnomer in the King's letters patent does not aid non noſmer, 331. pl. 22

In a patent of King H. 7. the four letters *H. R. A.* and *F.* being the King's ſtile, were left out to be afterwards limmed with gold, yet this patent in C. B. holden good, 342. pl. 53

See OFFICE, SCIRE FACIAS.

LIMITATIONS.

See FORMEDON.

LIVERY.

If a feoffment be made to four, and livery only to one, nothing paſſeth to the others, unleſs it be a feoffment by deed, 14. pl. 71. 35. pl. 26

If a man have two leſſees by ſepatate leaſes of land in one county, livery to a feoffee, of all his lands in that county, made upon the lands of one of the leſſees in the name of the whole, paſſes nothing of the other's land; *ſecus* if he were tenant at will, 18. pl. 106

The wife of a termor continuing in the houſe avoids the livery made by the landlord to a feoffee; nor ſhall this, though made in the name of the whole, be good to paſs an acre of land in view held under the ſame leaſe, 18. pl. 107

Whether a feoffment with livery made by the reverſioner, the termor being upon the land, be good, 33. pl. 13

Whether livery made by two in the preſence of the third, under a warrant to the three to make livery *conjunctim et diviſim*, be good.—Clearly not, if he had been abſent, 62. pl. 34

On a feoffment of lands, ſome in leaſe others not, with letter of attorney to make livery, he does it in one parcel of the leaſehold in the name of all, but without the attornment or agreement of the termors, what paſſes, 131. pl. 71

A corporation cannot make livery by the view, nor can an attorney, 233. pl. 10

Where lands leaſed lie in two counties there muſt be livery in both, 246. pl. 71

Ceſtuy que uſe of three acres by ſeveral feoffments in one county makes a feoffment of all and livery in one only, yet all paſſes under 1. R. 3. c. 1. 283. pl. 30

See FEOFFMENT, TENURE.

LONDON.

In attaint in *London* upon 23. H. 8. c. 3. the ſheriff to the re-ſummons returned the party and the petit jury ſerved, but as to the grand jury returned the ſtatute 37. H. 8 c. 5. and that both juries were *Londoners*: the Court ordered the ſtatute to be ſtruck out of the return, and made the *diſtringas* returnable in *London*, 81. pl. 65

If judgment againſt the garniſhee in a foreign attachment in *London* be not executed, the plaintiff may reſort back to his principal debtor, and he may ſue the garniſhee notwithſtanding the judgment, 82. pl. 72

Whether the cuſtom of foreign attachment holds between a citizen and foreigner, 196. pl. 42

Lands in *London* paſs by parol bargain and ſale without indenture or inrollment as before 27. H. 8. c. 16. by a proviſo in the ſtatute, 229. pl. 50

A cuſtom that goods taken in *London* ſhall not be replevied by the King's writ, but only in *London*, is bad, 246. pl. 67

A foreigner, as well as a freeman, may by the cuſtom deviſe his lands in *London*, but not in mortmain without the King's licenſe, nor with ſuch leave but to corporations within the city, 255. pl. 3

M.

MAINTENANCE.

A man makes a feoffment to be reinfeoffed to himſelf and his firſt wife, remainder to his fourth ſon in tail, remainder to his eldeſt ſon, and afterwards makes a new feoffment to be re-infeoffed to himſelf and his ſecond wife, remainder to his eldeſt ſon in tail, and then dies, the fourth ſon enters, Whether the eldeſt under 32 H. 8. c. 9. may buy a pretended title to the eſtate, 52. pl. 6

A term is within the purview of 32. H. 8. c. 9. 74. pl. 19

In a declaration againſt the leſſors upon that ſtatute it is neceſſary to aver it to be a pretended right or title, but not to aver the commencement or duration of the term; and a miſrecital of the ſtatute is fatal, 74. pl. 19

To labour and expend money in the law-ſuits of another is maintenance, 356. pl. 39

But not to aſſiſt another in ſuits and quarrels which are not law-ſuits, 356. pl. 40

A leaſe for years by one out of poſſeſſion made off the land, and for the purpoſe of trying the title, is within the ſtatute, 374. pl. 17

MANDAMUS.

A citizen of *London* was diſfranchiſed for refuſing to ſtand to the award of two of the aldermen in a cauſe of his in C. B. and a *mandamus* granted to reſtore him, 333. pl. 28

MANOR.

A law day or warren in a manor doth not paſs by a feoffment of the manor without *cum pertinentiis*, 30. pl. 209

A leet jury refuſing to preſent according to their oaths may be fined by the ſteward: but if it be a jury or homage of copyholders in a court baron it is a forfeiture of their tenures. 211. pl. 31

An indictment in a court leet or torn for ſtriking without bloodſhed is bad, 233 pl. 14

Whether a court leet may be preſcribed for out of *Michaelmas*, 234. pl. 14

In pleading his title the ſteward of a manor need only ſhew that he kept the courts; he need not ſhew any engroſſing of the rolls, 156. pl. 26

But it ſeems he ſhould ſhew a tender of his ſervices to each ſucceeding lord, ſince it is iſſuable that ſuch a ſucceſſor did not exonerate him, 156. pl. 26

The cuſtom of a manor was for the lord, or his overſeer, or his deputy, to make leaſes, the lord by will empowered two to make leaſes according to the cuſtom, they hold a court in their own names and grant a reverſion, the wife of the lord, it being aſſigned for her dower, may avoid this grant, 251. pl. 89

The lord grants a rent-charge to *B.* out of the manor, and afterwards grants an eſcheated copyhold to *A.*—Holden, that *A.* comes in ſubject to the charge; *ſecus*, perhaps, if an ancient copyholder had ſurrendered his eſtate to *A.* and the lord had only admitted him accordingly, 270. pl. 23

The King may grant a manor and except the courts and perquiſites of courts, but a ſubject cannot, 288. pl. 54

If the lord of a waſte of two hundred acres enfeoff another of fifty acres, the feoffee muſt encloſe them or keep his cattle from ſtraying into the reſidue. And ſo muſt the lord of the reſidue, 372. pl. 10

MARRIAGE.

On the plea of *ne unques accouple* the biſhop to the writ for his certificate muſt expreſsly return the lawfulneſs or unlawfulneſs of the marriage; ſpecially returning eſpouſals at certain ages is bad, 305. pl. 60

So though he conclude "*iſſint* lawfully married," 313. pl. 92

Certificate by the biſhop to ſuch writ, 369. pl. 48

A lad of twelve years of age is married and put to bed to an adult female, and dies

dies before years of conſent, it is a good marriage *quoad dower*, and ſhall be ſo certified by the biſhop, 369. pl. 48

MASS.

Every prieſt or miniſter, whether with cure of ſouls or not, is equally within 1 El. c. 2. 203. pl. 72

One convicted by ſeveral indictments of hearing ſeveral maſſes ſhall forfeit but one penalty under 1. El. c. 2. 323. pl. 31

MASTER AND SERVANT.

The chancellor of the augmentations delivers a bond which he had taken for the Queen by virtue of his office, to his ſervant to bail to the clerk, to whom the cuſtody of it belonged, the ſervant conſpires with the obligor, who cancels the bond—his maſter is chargeable to the Queen for it, and ſo is the ſervant and obligor, 161. pl. 45

If a ſervant makes a bill acknowledging the purchaſe of goods for his maſter's uſe, and binds himſelf to pay, but does not ſeal the bill, debt will not lie againſt him, but caſe on the *aſſumpſit*, 230. pl. 56

The juſtices ought to certify the rates of ſervants wages according to 5. El. c. 4. §. 15. though they continue them exactly as in the preceding year, 265. pl. 3

MISNOMER.

An *exigent* is ſued to outlaw a defendant in appeal, who ſues out a *ſuperſedeas* by the name in the writ, he cannot after that plead a *miſnomer* to the original, 88. pl. 107

Leaſe by the Provoſt and royal college of the college of the *Bleſſed Mary*, of *Eton*, *&c.* by the name of the Provoſt and fellows of the royal college of *Eton*, *&c.* is void, 150. pl. 85

See LEASE.

MIS-RECITAL.

Leaſe for years to *A.* and afterwards a leaſe of the ſame land to B miſ-reciting the date of the firſt leaſe, to commence from the time of the firſt intereſt being lawfully defeated. The aſſignee of *A.* took a new leaſe, ſurrendering the firſt, Whether *B.*'s term ſhall take effect, 93. pl. 28

Miſ-recital of the date of an act of parliament in the writ, where it is rightly ſet out in the declaration, will not arreſt the judgment, 95. pl. 36

The Queen in a grant of an office recited a ſurrender made to her of a former grant as *dated* 33 *H.* 8. when in fact it was dated 32 H. 8. this miſ-recital vitiates the grant, and is not aided by 4. & 5. P. & M. c. 1. 194. pl. 35

Indictment reciting 1. El. c. 2. to be made at a parliament holden on the 23d of *January*, when it was adjourned to the 25th, is a fatal variance: but an information in this caſe reciting the parliament *tent. apud Weſt. anno primo regine nunc* was holden good, though it referred to that indictment, 203. pl. 72

One having bought a meſſuage in *D.* of *T. C.* makes a feoffment by deed of his meſſuage, late of *R. C.* in *D.* this miſtake does not vitiate the conveyance, 376. pl. 25

See CONVEYANCE.

MONSTRANS DE DROIT.

The mortgagor of ſocage lands redeeming ſhall by *monſtrans de droit* without petition recover the lands which the King had taken into ward with the heir of the mortgagee his tenant *in capite*, 236. pl. 25

See WARDSHIP.

MORT D'ANCESTOR.

In *mort d'anceſtor*, if the iſſue joined on one of the three points be found againſt the tenant, it ſeems the other ſhould be enquired of; as, if he plead in abatement, or vouch, all three muſt; but if he plead in bar and fail, it is peremptory againſt him, 310. pl. 82

MORTMAIN.

The juſtices of C. B. refuſed to ingroſs a fine of lands to be holden in mortmain without a ſpecial writ for that purpoſe, 188. pl. 9

Deviſe on 4 & 5. P. & M. to *Trinity College*, *Cambridge*, is good by 1. & 2. Ph. & M. c. 8. which ſhall be favourably expounded, 255. pl. 7.

MURDER.

Where perſons aſſembled with force to ſeize goods under pretence of lawful authority, and a woman unarmed coming out of the houſe was killed by a ſtone, thrown by one of the aſſailants at another

another perſon in the gateway, this is murder in them all, 128. pl. 69

Procuring before the birth the murder of an infant after the birth, is felony without clergy, 186. pl. 2

If a wife procure the murder of her huſband by a ſtranger in her abſence, it is not petit treaſon in her, but ſhe is acceſſary to murder only, for the crime is but murder in the principal, 254. pl. 103. 332. pl. 25

But the wife ſo conſpiring with a ſervant, though her huſband be killed in her abſence, is guilty of petit treaſon, 332. pl. 25

See INDICTMENT, PARDON.

NUISANCE.

Whether caſe by one who has freehold for diverting *multum aquæ* of a ſtream, which *currere conſuevit* to plaintiff's mill, is good, 248. pl. 80

Whether aſſiſe of nuiſance lies for ſuch diverſion, 248. pl. 80

But where one has freehold in a houſe, and a way to it over defendant's land, he muſt bring aſſiſe if it be ſtopped up, he cannot have an action on the caſe, 250. pl. 88

A. fixed a ſmall pipe and cock into the main pipe, and diverted a water courſe to *B.*'s houſe; after his death his wife occaſionally uſes it, it is a freſh diverſion in her, 319. pl. 17

N.

NEGATIVE PREGNANT.

Declaration on 5 & 6. Ed. 6. c. 20. for lending money for intereſt and uſury, and that the defendant received uſurious intereſt; plea that he did not receive is a negative pregnant, for by the loan the offence is complete, 95. pl. 36

NEW ASSIGNMENT.

In a new aſſignment ſpecially naming the place and its abuttals, the abuttals, as well as the name, muſt be proved, 161 pl. 46

A new aſſignment in one acre of land or meadow is void for uncertainty, 264. pl. 39

A new aſſignment muſt give a name to the place, or abuttals, 264. pl. 39

NONSUIT.

In a writ of right, if the tenant make default on the eſſoin day the demandant cannot be nonſuited, 103. pl. 8

Whether the traverſer of an office can be nonſuited, 141. pl. 47

See COSTS, REPLEVIN, TRIAL.

NOTICE.

See CHURCH, CONVEYANCE, ECCLESIASTICAL PERSONS, JUSTICES, TENDER.

O.

OCCUPANT.

See RENT.

OFFICE AND OFFICER.

By the grant of the office of keeper with 3l. fee *of the rents, iſſues, and profits of a manor by the hands of the receiver*,—the manor is charged, 80. pl. 60

The Court may diſcharge a filazer *ore tenus* without entering it of record, 114. pl. 64

Grant of the office of juſtice of C. B. 144. pl. 58

Acceptance by a judge of C. B. of the patent creating him a judge of B. R. vacates his former patent, 158. pl. 34

A ſheriff fined in the ſtar-chamber for not taking the oath of office at entering on his sheriffalty, and for making a falſe return of a knight of parliament, 168 pl. 19

The office of exigenter is in the gift of the chief juſtice of C. B. and the King's grant thereof, even during a vacancy of the chief juſticeſhip, is void, 175. pl. 25

The exigenter, impriſoned for refuſing to anſwer commiſſioners appointed by the crown to try his right to the office, held intitled to a *habeas corpus*, as a neceſſary miniſter to the court, 175. pl. 25

The office of chirographer of C. B. is in the gift of the King, 176. pl. 25

So is that of *cuſtos brevium*, 176. pl. 34

The clerkſhip of the hanaper is granted to *A.* and *B. B.* having only a duplicate; *A.* ſurrenders the original patent; the duplicate cannot aid *B.* for it is made by the chancellor's own pleaſure without warrant, 179. pl. 4

The office of uſher of the exchequer is holden of the King by grand ſerjeanty, 213. pl. 42

Whether a ſurrender of the bannerbearerſhip, to a maſter in chancery who recorded a memorandum thereof, but without any delivering up of the patent, is a valid ſurrender of the office, 176. pl. 29

The office of receiver of the court of augmentations is not forfeited for non-attendance on any ſovereign when diſtreſſed by rebels, under 11. H. 7. c. 18. except that by whom the appointment was made, 210. pl. 28

The office of receiverſhip of the court of augmentations is ſo incorporated with that court as to be void on its diſſolution by act of parliament, 216. pl. 55

The keeper of the great ſeal, when there is no chancellor, may appoint commiſſioners to hear and determine piracies under 28. H. 8. c. 15. §. 1. 211. pl. 33

If a remembrancer of the exchequer be made a baron of the exchequer, the firſt office becomes void, 197. pl. 47.

Of the offices of chief prothonotary in C. B. and coroner and attorney of B. R. and that the grant of them to unſkilful perſons is void, 150 pl. 1

Upon an information grounded on an indictment againſt an hereditary ſheriff for voluntary eſcapes of felons, and holding his tourn *in loco inſueto*, the office may be ſeized into the King's hands *quouſque*, without *ſcire facias* or other proceſs, 151. pl. 4

Though the cuſtomer of a port muſt, by 1. El. c. 11. make a deputy, ſtill if he certify falſely into the exchequer through the concealment of that deputy, he is liable to the penalties of 3. H. 6. c. 3. 238. pl. 38

A ſteward to hold courts, with a ſalary, may be appointed by parol, and debt, though not annuity, will lie for ſuch ſalary, 248. pl. 79

The office of ſteward of a manor is not [illegible]rrantable as a reverſion, except by the [illegible]ing: and the grant being void, that of the fee for exerciſing it, is void alſo, 259. pl. 18.

But it may be granted to the ſon after the death of his father, grantee for life, by the ſame deed, 270. pl. 23

The *Biſhop of London*, being a high commiſſioner, is tranſlated to *York*, ſtill his authority continues, 289. pl. 60

If he who holds a manor by the ſervice of being conſtable of *England*, die, leaving two daughters only, they while ſole, may exerciſe the office by deputy, and after marriage of the eldeſt her huſband alone may exerciſe it: and the youngeſt alſo marrying, and the crown devolving upon her huſband, who makes partition, ſtill the huſband of the eldeſt muſt do the entire ſervices, but the King may refuſe them at his pleaſure, 285. pl. 39

If a ſheriff ſucceed to a peerage *tempore parliamenti*, his office is not thereby determined, 355. note *(a)*

The King by act of parliament might not grant the office of aulneager without a warrant of the treaſurer; ſuch grant is then void, though it have a *non obſtante* clauſe, if that clauſe be not ſhewn to the Court, 303. pl. 48

Delivery of the writ of diſcharge of the old ſheriff to the clerk of the county ſitting in the county court in the abſence of the ſheriff, determines his authority, 355. pl. 36

See BOND, LETTERS PATENT, KING, MANOR, REVERSION, SCIRE FACIAS.

ORDINARY.

See ECCLESIASTICAL PERSONS.

OUTLAWRY.

On a *capias utlagatum* returned *non eſt inventus*, defendant appearing *gratis* cannot plead to the outlawry, for the plaintiff is out of court, nor is it known that he is the party outlawed unleſs brought in by a *capi corpus*, 192. pl. 25

Outlawry reverſed, without writ of error for the omiſſion of the words *tribus ſeparacibus diebus* in the writ of proclamation, 206. pl. 10

If a *capias utlagatum* go into *Middleſex* againſt a defendant called, late of *London*, *alias dictus* of *M.* in the county of *K.* and the proclamations were in *K.* when in fact he was *commorant* in *Middleſex*,

Middlesex, he may avoid the outlawry under 6. H. 8. c. 4. without writ of error; but if the action be brought in another county than *London* or *Middlesex*, the proclamations need not be where he is commorant; and if he be wrong named in the writ, he may avoid it by the statute of Additions, 213. pl. 44

Outlawry does not lie in detinue of charters, 222. pl. 23

The coroner on *certiorari* returning defendant duly outlawed is not sufficient to make him an outlaw; and the Court will reverse it without writ of error, if it appear that defendant delivered a *superfedeas* at the fifth county court, 222. pl. 23

The special *capias utlagatum cum extendi facias* does not authorize the sheriff to sell the goods taken under it, 222. pl. 23

Outlawry of an infant is not void, but voidable by error, 239. pl. 39

Persons commiting treason of any sort may be outlawed while beyond sea, the statutes 26. H. 8. c. 13. and 5. & 6. Ed. 6. c. 11. extending to all treasons, 287. pl. 49

The *capias* on which the writ of *exigent* lies, must be into the county where the action is brought: if it issue on the *testatum* into a foreign county it is error, 295. pl. 18

In *London*, the recorder passes judgment of outlawry, 317. pl. 6

A writ to certify the outlawry shall by the custom there be directed to the sheriffs, 317. pl 6

Yet though their certificate is good for the King it is not so for a subject, and if the *exigent* itself be not returned, the outlawry is not pleadable in disability, 317. pl. 6

See AUDITA QUERELA, ERROR.

P.

PARDON.

If pardon of outlawry in an indictment vary from the indictment in the additions, defendant must aver that he is the same person, 34. pl. 20

"*We pardon to A. and B. all outlawries, "&c. against them or either of them "proclaimed,*" is sufficient, without saying *to A. and B. and to each of them*, 34. pl. 20

If a general pardon intervene between the stroke and the death, Whether the felony be discharged by it, 99. pl. 65

The judges are bound *ex officio* to take notice of a general pardon, 119. pl. 4

A pardon of treason, with restitution of chattels, does not release a prior recognizance to the King, 124. pl. 39

A. purchases lands holden *in capite* to him and his wife and his right heirs; the King at his coronation pardons all trespasses *for whatsoever alienations made to him*, it extends to this alienation, though the wife be not named in the pardon, 196. pl. 45

The chancellor, not being certified whether one outlawed after judgment in debt had satisfied the plaintiff or not, issued his pardon *ita quod stet rectus in curiâ*, where it should be *ita quod satisfaceret querenti*; and though, in fact, plaintiff was not satisfied, on two *scire facias* and two *nihils* returned the pardon was allowed, 172. pl. 10

Murder is merged in petit treason, which being discharged by a general pardon excepting murder, a servant convicted of killing his master, but not laid *proditorie*, was reprieved, 235. pl. 19

By a general pardon discharging *all intrusions and entries*, the mean issues of *capite* lands in lease on rents, and the suing of liveries that have not been tendered, are discharged: and the exception of homages, reliefs, rents, &c. with the actions of account and debt reserved therein to the King, does not apply to these rents, which he was not entitled to by law at the passing of the statute, 249. pl. 83

If defendant in appeal of murder be found guilty of manslaughter, Whether the King can pardon the burning in the hand, 261. pl. 26

A general pardon which discharges all intrusions and suings of liveries, extends to those whereof office is not found at the time of the pardon, 284. pl. 36

Pardon of all intrusions, will not avail the heir without the words *issues and profits*, 286. pl. 42

By statute all contempts and [illegible] are pardoned, but piracies [illegible] the return of Whether the punish[illegible] 299. pl. 34

In

ſtanding mute on an indictment for piracy be pardoned, *qu.*—but he may be indicted *de novo* for another piracy committed at the ſame time with the former, 308. pl. 73

Whether on a ſuit in the ſtar chamber for forging the cuſtomary of a manor, the King may pardon the corporal puniſhment without the party releaſing, 323. pl. 28

See ACCESSARY, BARON AND FEME, SCIRE FACIAS.

PARLIAMENT.

See ERROR, PRIVILEGE, WRITS.

PAROL DEMUR.

In a ſuit by petition to the King in the nature of a *formedon* in remainder, for lands in the King's hands by attainder, which right of remainder deſcended from an anceſtor who was remainder-man expectant upon an eſtate-tail, the parol ſhall demur for the nonage of the petitioner, 136. pl. 17

Three ſued as heirs in gavelkind, one of them an infant, were all outlawed; the two of full age purchaſed their charters of pardon:—in *ſcire facias* againſt them *ſimul cum &c.* the parol ſhall not demur for the infancy of the other, who is out of court till reverſal, 239. pl. 39

If tenant for life grant his eſtate to one and his heirs, in *formedon* againſt the heir, an infant, he ſhall not have his age, 321. pl. 22

PARTITION.

See JOINTENANT.

PERJURY.

Perjury in the proof of a ſuggeſtion to obtain a prohibition in B. R. is not puniſhable in the ſtar-chamber, 242. pl. 53

Suit in the chancery for perjury committed there, muſt be by *Latin* bill, and the iſſue tried in B. R. and defendant ſhall not be ſworn to his plea, nor examined on interrogatories, unleſs that court had abſolute authority in perjuries before 5. El. c. 9. ſaved by the thirteenth ſection, 288. pl. 51

PERNANCY OF PROFITS

[illegible]rantable as [illegible] 27. H. 8. c. 10. 32. pl. 4

[illegible]ng: and the gr[illegible]VIT.

PETITION OF RIGHT.

See ATTAINDER, MONSTRANS DE DROINT.

PIEPOWDER.

See COURTS.

PLEA.

Whether in a *qui tam* action the declaration muſt be to anſwer to the King and the party who ſues, 159. pl. 37

The action on *Weſt.* 1. c. 20. muſt be to anſwer as well the King as the plaintiff, and in the writ there muſt be a double recital of finding ſurety, 238. pl. 34

In debt on 23. H. 6. c. 14. count that he was elected *by the greater number* generally, is good, 113. pl. 57

Licet he was elected, *yet &c.* is ſufficient averment, 113. pl. 57

Where two are named in a deed as grantors, but only one ſeals, it is not neceſſary to mention the other in the declaration, 227. pl. 43

In B. R. in a bill of treſpaſs laid in *Middleſex* defendant need not be charged to be in cuſtody of the marſhal, 118. pl. 78

Whether on 13. R. 2. ſt. 1. c. 5. and 2. H. 4. c. 11. declaration againſt one only, for that he *ſimul cum A. B.* impleaded in the admiralty court, is good, 159. pl. 37. And

Whether the contract muſt be ſtated to be made withing the body of the county, and not upon the high ſea, 159. pl. 37

"By indenture *witneſſing* a demiſe from "*A.*" is not ſufficient averment that *A.* demiſed, 117 pl. 17

Where a deed giving a power to appoint is pleaded, if no appointment be made it muſt be ſo averred; *ſecus* if the deed be not pleaded, 136. pl. 17

In waſte plaintiff declared, that an abbot was ſeiſed in right of his abbey of the place waſted, and demiſed to defendant, and that Hen. 8. being ſeiſed on the diſſolution granted to plaintiff and his heirs *tenementa prædicta per nomen manerii de C. cum pertinentiis*, this is ſufficient, without averment that the land in leaſe is parcel of the manor, 207. pl. 14

In *ejectione firmæ* for a rectory, it is ſufficient to ſay in the count, that the parſon is ſeiſed in his demeſne without expreſs averment of his life, 304. pl. 52

In

In ejectment, count of a demiſe of three hundred acres *per nomen manerii*, by virtue of which he entered into *manerium praditum*, is well enough, without ſaying he entered into the ſaid three hundred acres, and *manerium* is ſurpluſage, 304. pl. 57

In an action for diverting a water courſe which ran to *B.*'s houſe, he ſhould ſtate that he *was* owner of the houſe at the time, not that he *is* in the preſent tenſe, 319. pl. 17

A leaſe is made to commence at a future day, before which the reverſion is ſeveral times granted over, afterwards the leſſee entering commits waſte:—the laſt aſſignee may count *ex aſſignatione* of each to whom the land came after the leaſe made, although there was no tenure under them, 206. pl. 11

Bond to pay an annual ſum for ſix years for the education of *A.* in debt the plaintiff need not aver the life of *A.* ſince, if he were dead, payment muſt continue for ſix years, 329. pl. 13

Defendant claiming as deviſee of the entire land need not ſhew it to be of ſocage tenure, 329. pl. 16

In trover for a hawk, plaintiff muſt in his declaration ſhew that it was reclaimed, 306. pl. 66

Ceſtuy que uſe in remainder brings *formedon*, he need not make a *profert* of the deed creating the remainder, for it belongs to the feoffees, or the remainder might commence without deed, 277 pl. 58

In pleading a ſentence of deprivation, it is not neceſſary to ſhew before what judge the ſentence was given, 293. pl. 3

So adminiſtration may be pleaded generally, without ſhewing who committed it, 294. pl. 7

A life eſtate in remainder after the death of the huſband, and limited on condition, may be averred to have been for jointure, though not ſo expreſſed in the conveyance, 317. pl. 7

An alien undertakes to ſatisfy the mayor whatever ſhall be due for the cranage of ſalt imported into *London*, which by the cuſtom is the twentieth:—in *aſſumpſit* plaintiff declares, that the defendant hath not yet ſatisfied him *for eight weys, being the twentieth part, for the cranage aforeſaid*, and good, as if he had ſaid, *hath not yet ſatisfied the twentieth part*, 352. pl. 27

A naked colour in *ejectione firmæ* is not ſufficient, as in aſſiſe or treſpaſs, which do not comprehend any title or conveyance in the writ or count, as this action does in both, 366. pl. 35

To debt on an indenture for payment of a ſum of money, payment without acquittance is a bad plea, 6. pl. 3. 25. pl. 160

To debt on a leaſe for years *non habuit nec occupavit* is a bad plea; *ſecus* on a leaſe at will, 14. pl. 70

To debt for twenty quarters of malt, tender and refuſal is a bad plea without *uncore priſt*, 24. pl. 154

To declaration for delivering three hundred and ſeventy-three pounds of *bad* on an *aſſumpſit* for four hundred pounds of *good* wax, ſtating half the price to have been paid in hand, the reſt to be paid on a certain day, plea of twenty pounds of wax given and accepted in ſatisfaction is good; but the declaration bad for not averring that the day of payment is not yet come, or that it is paſt, and the reſidue of the money paid, 75. pl. 23

Count on a bond dated 12th of *January*; plea that it was made on the 1ſt is bad, for it does not anſwer the one declared on, 167. pl. 14

In treſpaſs, plea that *A.* was ſeiſed in fee, and demiſed to the defendant, replication that *B.* was ſeiſed in fee, and demiſed to plaintiff, traverſing that *A.* had anything, is bad, 112. pl. 48

In treſpaſs for breaking a cloſe at *D.* juſtification in *S* traverſing the treſpaſs in *D.* amounts but to the general iſſue, 19. pl. 109

To debt againſt a ſurety in a bond given by a priſoner in *Ludgate*, and him conditioned to ſave harmleſs and diſcharge fees, and render his body at any time, plea of conditions performed generally is bad, 118. pl. 1

Whether the adminiſtrator of an adminiſtrator to an action for a debt of the firſt inteſtate may plead *plene adminiſtravit* the goods of the ſecond inteſtate, 112. pl. 51

That plaintiff had an *elegit* executed is a good plea in bar to an action for damages recovered, without ſhewing the return of the writ, 299. pl. 34

In

In account by one as adminiſtrator of *C.* plea that *C.* made a will and executors, demurred to for not traverſing the inteſtacy, 202. pl. 69

After a plea in bar and voucher which affirms the writ, jointenure of parcel cannot be pleaded in abatement, 291. pl. 67

In treſpaſs, defendant conveying by ſeveral deſcents in tail, the plaintiff cannot convey by a feoffment from one of the meſne anceſtors, and traverſe his dying ſeiſed; but he ought, *proteſtando* to the reſt, to plead the feoffment to be by the laſt anceſtor, and traverſe his dying ſeiſed, 107. pl. 25

If ſeiſin be pleaded in the maſter and fellows of a college, it need not be ſaid in *jure collegii*, 103. pl. 5

Bargain and ſale by indenture ſubſequent to the ejectment, pleaded as ſuch in *ejectione firmæ*, is bad; it ſhould be as a releaſe or confirmation, and the plaintiff cannot reply *ne granta pas per ſon fait*, but muſt either deny the deed, or that he had any thing at the time, 116. pl. 71

Where the iſſue is, whether *A.* be alive or dead, the party who pleads the death needs not ſhew the place of the death, for the *venue* ſhall be of the place where he was alleged to be alive, 14. pl. 72

In account for tin, that defendant ſold it and took a bond in the name of the plaintiff is no plea, but is good before auditors, 29. pl. 193

Ne unques ſon receiver is a bad plea in account by the bailor for money delivered to defendant to bail over, which he has done, for he muſt plead it ſpecially; but he cannot plead it before auditors, 196. pl. 43

To an information againſt the King's receiver for arrears of his account before auditors, he may plead *nil debet* to the country, but cannot wage his law, 145. pl. 63

One who, before the ſtatute of Uſes, was a *caſtuy que uſe* with his wife, pleading the jointenancy after the ſtatute, muſt ſhew the ſtatute, 32. pl. 3

A party need not recite more of a ſtatute than is neceſſary to ſupport his own caſe, 103. pl. 7

To debt on bond, with condition, reciting a ſale of lands, and that the obligor *ſhall warrant A. if he ſhould enjoy it peaceably to him and his heirs to hold of a manor by ſervices &c.* it is not double to plead, that *A.* did enjoy peaceably till his death, when his ſon entered without admiſſion, contrary to the cuſtom, and to ſtate an entry of the lord for forfeiture. But defendant ſhould alſo plead ſpecially, that he did warrant, and that *A.* never was moleſted, 42. pl. 9

Pleading a demiſe for life to commence after the death of *A.* is bad, no livery being ſhewn to paſs an immediate, or attornment to paſs a reverſionary intereſt, 117. pl. 76

Entry of the plaintiff between verdict and judgment, whereby *he became ſeiſed &c.* is no plea to a *ſcire facias* for execution and damages recovered in aſſiſe; but if he had pleaded that the plaintiff *is ſtill ſeiſed, quere*, 227. pl. 42

In aſſiſe, ſeiſin of the plaintiff as villein regardant being pleaded, the iſſue ſhould be, frank or not; and not the ſeiſin be traverſed, 284. pl. 32

In treſpaſs, defendant pleading that plaintiff a minor by indenture and letter of attorney therein, enfeoffed the defendant's father, and afterwards by indenture confirmed the ſaid tenement &c. *habendum &c.* and deſcent to himſelf, is bad: 1ſt, Becauſe livery by letter of attorney of an infant is a diſſeiſin; 2dly, Becauſe the confirmation is pleaded of a tenement &c. *habendum &c.* when the land did not paſs by the confirmation; 3dly, Becauſe defendant's father is not averred to be ſeiſed; 4thly, Becauſe plaintiff is not averred of full age at the time of the confirmation; 5thly, Becauſe no *profert* of either of the plaintiff's indentures, 108. pl. 33

Debt for rent againſt the deviſee of a termor, and demurrer becauſe plaintiff did not ſhew who were executors, and that defendant entered with their conſent; 2dly, For not ſaying expreſsly, that he entered by virtue of the deviſe, 254. pl. 1

In *ſcire facias* on a recognizance to perform covenants to permit the plaintiff to have common in *D.* and not to alter the courſe of the fields; plea that defendant hath permitted &c. and hath not altered the courſe, is good, 279. pl. 6

A. gives *B.* all his trees, and cuts them down, *B.* takes them away. In treſpaſs by

by *A.* for cutting and taking away, he may plead not guilty to the cutting, and juſtify the reſidue, 305. pl. 57

After a recovery in the court at *Ipſwich* the bailiff committed defendant in execution, but that was not entered on the record; he eſcaped, and in debt againſt him, and count on the record of the recovery, he pleads the commitment in execution without a *prout patet per recordum*, the plaintiff cannot reply *nul tiel record*; but if ſuch commitment was illegal he muſt demur, 368. pl. 45

The King by letters patent grants the manor of *C.* with the appurtenances; in *formedon* for one hundred acres of land &c. in *C.* not mentioning the manor, the plea ſhould be *non conceſſit*, and not *nient compriſe*, 342. pl. 53

Plea of a releaſe *puis darrein continuance* ſhould ſay *actio non*, and not *inquiſitio non*, 361. pl. 10

Leaſe of land by Hen. 8. excepting the trees. Edw. 6. grants the reverſion and the trees to the *Duke of N.* who leaſes the lands and trees to *C.* without impeachment of waſte. The duke is attainted of treaſon, and Queen M. grants the inheritance to defendant, who infeoffs the plaintiff, and binds himſelf to indemnify him againſt any claim of *C.* by virtue of his leaſe; *C.* fells trees; in an action on the bond, and *non damnificatus* pleaded, the replication muſt ſhew that *C.* claimed by virtue of his leaſe, and muſt conclude with *fic damnificatus*, 184. pl 61

After judgment againſt the biſhop and incumbent by default in *quare impedit* brought pending a ſuit to deprive the incumbent, being a layman; in deceit by them for non-ſummons, the ſentence of deprivation now given is no plea, 353. pl. 30

In debt againſt executors in *Middleſex*, who plead *plene adminiſtraverunt*, plaintiff may reply aſſets in another county, 30. pl. 206

Defendant having pleaded a *que eſtate* of a term, the attorney general for the King in the exchequer traverſing the original leaſe, after verdict againſt the King is too late to take advantage of the bad plea, 238. pl. 37

Fine and nonclaim pleaded in bar of a *formedon*; replication that the parties to the fine had nothing at the time &c. but that a ſtranger was ſeiſed in fee, is good, for the ſeiſin of a ſtranger is immaterial, and cannot be traverſed, 290. pl. 62

Avowry for taking beaſts in *N.* in a common field, under a demiſe from *B.* of the *locus in quo*, containing three hundred acres. Plea that before *B.* had anything &c. *A.* was ſeiſed in fee of the ſcite of the manor of *N.* whereof the ſaid three hundred acres are parcel, and demiſed by indenture to *B.* for years, *que eſtate &c.* is bad: 1ſt, Becauſe it neither confeſſes and avoids nor traverſes; 2dly, Becauſe the ſeiſin is alleged of the ſcite &c. whereof the three hundred acres are parcel, and alſo it is ſuppoſed common field; 3dly, Becauſe no *profert*; 4thly, Becauſe it is pleading a *que eſtate* of a term, and plaintiff does not ſhew how he came to it, 171. pl. 8

See further ASSISE, AUDITA QUERELA, BOND, DEPARTURE, DISTRESS, DOWER, ERROR, ESTOPPEL EXECUTOR, FORMEDON, HEIR, JEOFAIL, INNKEEPER, LEASE, LETTERS PATENT, MAINTENANCE, MANOR, NEGATIVE PREGNANT, NEW ASSIGNMENT, REVERSION, SATISFACTION, SLANDER, SURRENDER, TENDER, TRAVERSE, TRESPASS, WASTE.

POPE.

See SUPREEMACY.

PLEGIIS ACQUIETANDIS.

A. and *B.* are bound jointly and ſeverally for the debt of *A.* without ſaying that *B.* is ſurety; *plegiis acquietandis* will not lie, though the jury find that he was only ſurety, 370. pl. 58

POWER.

Under a power to *J. S.* by will, to have as well the government and ordering of teſtator's children as the diſpoſing, letting, and ordering of his lands, *J. S.* cannot ſell the land, 26. pl. 170

Ceſtuy que uſe before 27. H. 8 deviſed that *A B.* and *C.* his feoffees, ſhould ſell his land; *A.* dies, the ſurvivors cannot ſell, 177. pl. 32

A father declares the uſes of lands to his ſon and ſuch wife as he ſhould marry at the nomination and appointment of four. One of them dies before the marriage, the authority of the other three is determined, 189. pl. 15

A father

A father cannot grant the marriage of his ſon, which is a prerogative inſeparably annexed to his perſon; and if he give authority to others to appoint the marriage, by his death the authority is determined, 189. pl. 15

Deviſe that executors ſhall ſell with the aſſent of *A.* if *A.* die before aſſent the power of the executors is determined, 219, pl. 8

Where a private ſtatute of a college impowers certain members thereof to diſpenſe with the abſence of a fellow, diſpenſation by the major part only of thoſe individuals is not ſufficient, 247. pl. 74

The King grants a commiſſion out of the court of augmentations to aſſign to the wife of an attainted perſon the third part of the lands of her huſband; aſſignment by the commiſſioners of the third part of the rent of a houſe, though confirmed by the King, and accepted by the widow, is bad, as not purſuing the authority, which was only to aſſign land, 263. pl. 36

PREROGATIVE.

The King cannot diſpenſe with future acts of parliament, though he may with things in future whereof he hath the inheritance, 52. pl. 1.

If one indebted to the King for cuſtoms by covin infeoff his friend of land purchaſed with the King's money, himſelf taking the profits, it ſhall be ſeized into the King's hands *quouſque*, 160. pl. 41

If a collector indebted to the King alien his lands and goods, and die without heir or executor, proceſs ſhall iſſue againſt the terre-tenants and poſſeſſors of the goods to account, &c. 160. pl. 41

Of the King's prerogative reſpecting impoſts and cuſtoms, and reſtraining his ſubjects from going out of the realm, 165. pl. 5

The King licenſes *A.* to go beyond ſea for a certain purpoſe, provided that if he converſes with fugitives the licenſe ſhall be void; by privy ſeal he commands his return, the meſſenger is prevented by *A*'s ſervants from delivering the meſſage, certifies it, and a converſing with fugitives, into chancery, which is ſent to the exchequer, and his land is ſeized:—the licenſe is not revocable, being for a time certain, and converſing with fugitives does not make it void *ab initio*, 176. pl. 30

Where the King's debtor taken in execution for debt in B. R is brought up into the exchequer by prerogative writ teſted prior to the arreſt, and committed to the *Fleet* in execution for both debts, B. R. having him brought up by *habeas corpus* will remand him, 197. pl. 44

The King cannot intitle himſelf to any inheritance or freehold deviſed to him without matter of record, 74 pl. 13

Nor to any uſe, 74. pl. 17

The terre-tenants of land wholly belonging to the King's accountant after he became ſo, are liable to account for the arrears due from ſuch officer; but lands purchaſed jointly to him and his wife for her jointure are diſcharged. So if, ſeiſed in fee, he convey to both for her jointure before he get the office, ſhe ſhall not be charged for this land 224, pl. 32

The ſea leaves a great quantity of land upon the ſhore, Whether the King or the owner of the adjoining ſoil ſhall have it, 326. pl. 2

The King cannot unite a manor to the duchy of *Cornwall* without parliament, 95. pl. 33

Whether an alienation in fee-farm by a biſhop with confirmation, but without the King's licenſe, may be defeated by him as founder, under Weſt. 2. c. 41. 109. pl. 38.

Leaſes made by the King of lands of the duchy of *Lancaſter* are not voidable for the nonage of the King, inaſmuch as they paſs from his perſon as King and not as Duke; for in the title of King that of Duke is merged, 209. pl. 22

The King by his prerogative may nominate ſheriffs without the uſual meeting in the exechequer, 225. pl. 35

See ENTRY.

PRESCRIPTION AND CUSTOMS.

A man cannot preſcribe as a keeper of a park, without ſtating it to be an ancient park; but Whether he may preſcribe at all in himſelf and his predeceſſors by reaſon of his office, which is only for life, *quere*, 70. pl. 37

A man

A man having ſeveral commons in one place, one appurtenant to one meſſuage, the other to another meſſuage, cannot make a joint preſcription for both, 164 pl. 59

The cuſtom of wares foreign bought and foreign ſold within a city preſcribed for as ſeizable by *the mayor, ſheriff, and citizens*, at the ſame time ſhewing this name to be by incorporation of Rich. 2. where before they were *mayor, bailiffs, and citizens*, is good, 279. pl. 10.

A copyhold preſcribes, that all cuſtomary tenants *ejuſdem tenementi*, inſtead of *ejuſdem manerii*, have common of eſtovers in another manor, it is bad 363. pl. 27

A cuſtom that tenant for life may only leaſe for ſix years, is bad, 358. pl. 46

See HERIOT, PLEADING.

PRESENTMENT

Of bloodſhed in a court leet cannot be traverſed; *ſecus* of nuiſances, or what toucheth the freehold, 13. pl. 64

PRISON AND PRISONER.

The Term being adjourned to *Hertford*, the warden of the *Fleet* ſhall ſtill have cuſtody of the priſoners from C. B. the ſtar chamber, chancery, and exchequer; but *quære* of the duchy court, for the caſtle and priſon of *Hertford* is part of the duchy, 204. pl. 76

One in the Compter, to change his priſon, procured a feigned action and judgment againſt him in C. B. and was committed in execution to the *Fleet*; but on diſcovery of the fraud the Court ſet a fine on him, and remanded him back to the Compter, 249. pl. 84

Whether B. R. can charge in execution in the *Fleet* one already there in execution at the ſuit of the King, 297. pl. 24

Where a priſoner in execution would ſue attaint, but could not find mainpernors, the Court permitted him to go with a keeper to inſtruct his counſel, 364. pl. 30

PRIVILEGE.

A clerk in Chancery by ſuing out a general *ſuperſedeas* to an *exigent* forfeits his privilege, 33. pl. 18

A member of the Houſe of Commons is privileged from arreſts during ſeſſion of parliament, but after ſuch parliament may be taken again. And although he were not privileged, the ſheriff is not liable for an eſcape in giving him his liberty upon the writ of privilege directed to him for that purpoſe, 59. pl. 17

The writ of privilege for officers of the courts is with a poſitive *ſuperſedeas*, and no *procedendo* lies if redreſs may be had in that court to which the defendant belongs; *contra* where the privilege is only on account of a ſuit depending in the ſuperior courts, 287. pl. 48

An attorney of C. B. ſuing by attachment of privilege ſhall find pledges to proſecute, as well as a ſtranger ſuing an attorney, 288. pl. 53

A *Capias* does not lie againſt a biſhop, 315. pl. 99

Writ of privilege out of the exchequer not allowed to the receiver general of the revenues of the crown ſued in C. B. 328. pl. 9

A wife executrix is ſued with her huſband in C. B.; though he was clerk of the crown in the chancery, privilege was diſallowed, 377. pl. 30

Where a man has privilege of court, and with his wife coming thither to defend a ſuit againſt him, both ſhall have privilege from arreſts, 377. pl. 30

See JURORS.

PROCESS.

See ADJOURNMENT, DISCONTINUANCE OF ACTION, JURY, OUTLAWRY, WRITS.

PROHIBITION,

Granted after ſentence in the ſpiritual court for tithes, where a *modus* was pleaded, 79. pl. 49

On a prohibition to a ſuit for tithes of *wheat*, the land being ſuggeſted to be lately improved, and was ſo proved, but that tithes of *wool* and *lambs* had been always paid for it, though by the ſtatute the ſame tithes continue payable for ſeven years, the parſon cannot have a conſultation, for he has not ſued for theſe, 170. pl. 5

It will not lie to the court chriſtian in a ſuit for a legacy to be paid out of money ariſing from lands deviſed to be ſold by the executors for that purpoſe, 264. pl. 41

Prohibition lies to a ſuit for tithes *of hay and grain* where the lands in the hands of an abbot and his farmers have from time immemorial been charged with tithes *of wool and lambs* only, 349. pl. 16

PURPRESTURE.

Building on a man's own waſte within a foreſt is a purpreſture, but the juſtice of the foreſt may ſuffer it to ſtand and impoſe a rent on it, or he may raſe it. 249. pl. 45

So is the erecting of a beacon there, *ibid.*

Or making a cauſeway there, *ibid.*

Q.

QUARE IMPEDIT.

Before induction the clerk cannot plead his patron's title to the advowſon, 1. pl. 8

A. has the nomination, and an abbot the preſentation to a church; the King comes to the poſſeſſion of the abbacy, and preſents without nomination; *quare impedit* lies againſt the incumbent only, without naming the King, 48. pl. 17

Quare impedit muſt be brought in the county where the cathedral church is, though the advowſon itſelf be in another county, 194. pl. 33

If an agreement between tenants in common to preſent by turns be once executed, in *quare impedit* afterwards brought amongſt them the agreement need not be ſhewn, 29. pl. 194

If defendant have judgment on demurrer to the declaration, he ſhall have a writ to the biſhop without making any title, 24. pl. 153

In *quare impedit*, the patron's not being made a party to the writ is not error, 76. pl. 34

Nor that damages were adjudged for half-a-year's value under W. 2. c. 5. where it appeared that the preſentation was not deraigned within the ſix months, 76. pl. 34

In error in *quare impedit* defendant ſhall have coſts and damages, 77. pl. 36

In *quare impedit*, it is ſufficient for the grantee in fee of the patron to allege a preſentation by a prior grantee of the next avoidance, 106. pl. 18

In *quare impedit*, if the jury neglect to find whether the church be full, and of whoſe preſentation, and if the ſix months are paſſed, Whether the plaintiff may have a writ to the ſheriff to inquire of thoſe points, 135. pl. 12

If an executor of the grantee of the next avoidance grant it over, his grantee may maintain *quare impedit* without a *profert* of the will, 135. pl. 15

In *quare impedit*, though the biſhop who is patron die pending the writ plaintiff may ſtill have judgment, and the writ to remove the clerk in poſſeſſion directed to the ſucceeding biſhop or metropolitan, 194. pl. 33

The Crown in *quare impedit* ſhall recover damages, 236. pl. 28

In *quare impedit* againſt the archbiſhop, biſhop, and clerk, on default by all, damages ſhall be had againſt all, but the plaintiff muſt make title, and proceſs ſhall go to enquire &c.: and though the jury find plenarty by the clerk, of the collation of the archbiſhop, the plaintiff ſhall recover the preſentation and damages, 241. pl. 48

In *quare impedit* againſt the biſhop and incumbent, the biſhop claiming only as ordinary; iſſue between the others, and judgment for the plaintiff; on the writ to the biſhop he is not eſtopped from returning, that pending the iſſue, and the church being void, another had preſented a clerk of whom the church is now full. And if this return be falſe, plaintiff may have a *quare non admiſit* againſt him, and a *ſcire facias* againſt the incumbent to try the title, 260. pl. 21.

Plaintiff claiming under a grant from one who had two parts of the advowſon appendant to a manor (a ſtranger having the third), needs not ſhew how the grantor's turn commenced, for the appendancy ſhews it to have been by preſcription, 299. pl. 32

If during the vacancy of the ſee a writ to admit go to the guardian of the ſpiritualities which is not returnable, and before it is executed a new biſhop is created, the plaintiff upon ſuggeſtion may have a new writ to the biſhop returnable, 350. pl. 19

The

The count in *quare impedit* alleging a preſentation of *A.* by the King, and admiſſion and inſtitution accordingly, and that the church is now void by the death of *A.* is good, without ſaying that *A.* was inducted, 360. pl. 7.

See ABATEMENT, TRAVERSE.

QUO MINUS.

In a writ of *quo minus* the plaintiff declaring the King's title to the reverſion of his farm to be by grant from his leſſor, needs not allege it to have been by deed; and at any rate in this action the Court ſhall intend it to be a legal grant, and aid him for the benefit of the King, 174. pl. 18

R.

RANSOM.

Where there is fine and ranſom, the ranſom muſt be at leaſt treble the fine, 232. pl. 6

RECEIPT.

See BARON AND FEME, VOUCHER.

RECOGNIZANCE.

To three, before one of whom it is taken, is void as to him, but good for the others, 220. pl. 14

See BAIL.

RECORD.

Whether by a writ of error in a plea which was *in our court*, when the judgment was of a former reign; the record is removed, 105. pl. 16

The writ of error was directed to one chief juſtice, and the record certified by a new one, this is bad, for he had no warrant to remove the record, 173. pl. 16

Several judgments in debt againſt two on ſeveral *præcipes*, and ſeveral iſſues, one writ of error to remove both records is bad, 180. pl. 48

In C. B. on the iſſue of *nul tiel* record of the ſheriff's court, where a day is given to bring in the record, it is ſufficient if a tranſcript be ſent by *mittimus* out of chancery, the record itſelf need not be removed, 186. pl. 4

The appearance of the parties being entered on the plea roll, but an eſſoin for the defendant on the ſame day; and a non-ſuit for default of appearance of the plaintiff entered on the eſſoin roll, plaintiff may proceed to judgment, for the record of appearance on the plea roll confounds the eſſoin, 223. pl. 27

Outlawry of the plaintiff in C. B. pleaded to an action there, if on the iſſue of *nul tiel record* an exemplification of it under the ſeal of B. R (into which it has been removed on error) alone be produced, it is a failure of record, 227. pl. 45

So if the outlawry be reverſed before the day to have the record in court, for it is no record *ab initio*; yet a *reſpondeas ouſter* ſhall be awarded, 188. pl. 8. 228. pl. 45.

Whether *nul tiel record* can be averred againſt an exemplification of one in the court of great ſeſſions at *Cheſter*, under the ſeal of the county palatine, 236. pl. 26

If defendant plead outlawry in the plaintiff, variance in the day or place is a failure of record, 188. pl. 8

On the iſſue of *nul tiel record* of a fine with proclamations, in 30. H. 8. the year was omitted in the proclamations in *Trinity Term*, but in thoſe of *Eaſter* and *Michaelmas* it was inſerted; holden, no failure of record, 234. pl. 16

If the juſtices of *niſi prius* die, the clerk of aſſiſe may bring in the records without *certiorari* to the executors, and the form of the entry ſhall be as uſual, 163. pl. 54

A *certiorari* lies from B. R. to C. B. to remove the record itſelf of a fine for the purpoſe of cancelling it for errors But to remove a record of *niſi prius* on which attaint is brought, there muſt be a *certiorari de tenore recordi* out of chancery, and it muſt be ſent into B. R. by *mittimus* 274. pl. 44

On error in *dom. proc.* from B. R. the chief juſtice carries up both the record and a tranſcript, but when examined the tranſcript alone remains, the record is remanded, 375. pl. 19

See AMENDMENT, PRACTICE.

RECOVERY.

Recovery to the uſe of *A.* who afterwards infeoffs the recoveror, he ſhall be in by

the recovery, and continue ſeiſed to the uſe of *A.* 18. pl. 105

A recovery is void if the tenant to the *præcipe* be not in of a freehold at the time, though he have a remainder in tail, 252. pl. 98

Recovery ſuffered by a ſheriff of lands in his own county is erroneous, 168. pl. 8

If tenant in tail ſuffer a recovery, with recovery over in value, and die before execution, it may be ſued out againſt the iſſue, 376. pl. 26. 374. pl. 15.

Or the recoveror may enter, 35. pl. 28

See AMENDMENT, ERROR.

RECUSANCY.

The biſhop's chancellor may bring in the certificate under 5 El. c. 1. §. 9. of a refuſal to take the oath preſcribed by 1. El. c. 1. 234. pl. 15

RELEASE.

Bond to perform all covenants and agreements in an indenture, releaſe of all covenants releaſes the agreements alſo, but is no diſcharge of covenants already broken, 56. pl. 20

Releaſe of all actions, quarrels, ſuits, and treſpaſſes, is no bar to an action for a covenant broken after the releaſe given, 217. pl. 2

Tenant for life cannot releaſe to him in remainder, but muſt ſurrender, 251. pl. 91

A. with his wife and *B.* purchaſe lands to them and the heirs of *A.* and *B.*; *B.* releaſes to *A.* only, the wife takes nothing in *B.*'s moiety, but *A.* takes a fee, though there was no mention of his heirs, for his intereſt before was a fee ſimple; *ſecus* had ſuch releaſe been to the wife, who had only a life eſtate, 263. pl. 34

See AUDITA QUERELA, DEED.

REMAINDER.

A remainder of a term of years cannot be limited over after an eſtate-tail, 7. pl. 8. 253. pl. 102

Deviſe of a term to *A.* for life, remainder over:—the bequeſt is abſolute, and *A.* may diſpoſe of the whole, 74. pl. 18. 140. pl. 41. 277. pl. 59.

A remainder limited by will upon a fee determinable on failure of paying rent to a ſtranger *who ſhould then have it*, is void as to the ſtranger, but the heir may enter for condition broken, 33. pl. 13

Leaſe for life to *A.* and afterwards by indenture reciting it, a demiſe of the remainder to *B. habendum* the ſaid remainder for twenty years next after the determination of the firſt leaſe, Whether the reverſion paſſes under the word remainder, and the attornment be neceſſary, 46. pl. 1

A. enfeoffs to the uſe of himſelf and his wife for life, and to the heirs of their two bodies begotten, remainder to himſelf in fee, and has iſſue, the iſſue ſhall take the eſtate as a reverſion, and not by way of remainder, 133. pl. 6

Gift to *A.* for life, remainder to the right heirs male of the body of the donor, remainder to his right heirs for ever; the donor dies leaving iſſue two ſons, then *A.* dies, and the eldeſt ſon enters and dies alſo, leaving iſſue a daughter, ſhe ſhall have the land, and not the uncle, 156. pl. 24

See DEVISE, TERM.

REMITTER.

No remitter againſt a record, 5. pl. 1

If before the ſtatute of Uſes a man made a feoffment of his wife's land to his own uſe, and deviſed it to her for life, Whether after ſhe ſhould be remitted, 23. pl. 148

Tenant in tail before ſtatute of Uſes enfeoffs to the uſe of his ſon in fee, he ſhall not be remitted to his eſtate tail after the ſtatute, but his iſſue ſhall, 54. pl. 21

A. tenant in tail in right of his wife made a feoffment to the uſe of himſelf and his heirs and died, the feoffees, at the requeſt of *B.* the iſſue, made a leaſe for years, the wife then died, and *B.* entered upon the termor, and made another feoffment to the uſe of himſelf and wife, and his own heirs, and then died, leaving iſſue within age; and then the ſtatute of Uſes paſſed. After the death of *B.*'s wife his iſſue is not remitted, and *A.*'s cannot avoid the leaſe, 54 pl. 22

If tenant in tail enfeoff his heir within age and his wife, and die, and the heir alſo die living the wife, his iſſue is remitted, 68. pl. 22

Tenant in tail before the ſtatute of Uſes enfeoffs to the uſe of himſelf for life, remainder to the uſe of the iſſue in tail: the iſſue after the ſtatute, and after the death

death of the father, is not remitted, 77. pl. 39

Where a man ſeiſed of lands in right of his wife makes a feoffment to the uſe of himſelf and his wife for life, the poſſeſſion which comes back again to the wife by the execution of it to the uſe, by the ſtatute of Uſes does not work a remitter in her, and though found by office a remitter, that is of no avail, 106. pl. 19

G. tenant in tail makes a gift in tail to *A.* remainder to his own right heirs; the donee enters, and dies, leaving his wife *enceinte*; *G.*'s ſon enters after the ſtatute of Uſes: Whether he ſhall be remitted, or may *A.*'s iſſue, when born, enter upon him, 129 pl. 63

A. ſeiſed of land to himſelf and his wife for life, and to the heirs of *A.* makes a feoffment to the uſe of himſelf and wife for life, remainder to a younger ſon for life, remainder to his own heirs; on his death his wife is remitted if ſhe pleaſe, and is in of her firſt eſtate, 191. pl. 22

If a wife tenant for life, remainder over in tail, levy a fine *come ceo* with proclamations, with her huſband, to the remainder-man, who renders back a rent for the lives of both; on the death of the wife, and of him in remainder, the iſſue in tail, may avoid this rent, 213. pl. 41

Tenant in tail makes a feoffment to himſelf in fee, and afterwards deviſes to *A.* in fee, and dies ſeiſed, yet the heir is not remitted, 221. pl. 16

Ceſtuy que uſe in tail before the ſtatute of Uſes made a feoffment to himſelf, remainder to his ſon and his wife in tail, and after the ſtatute died, the ſon is not remitted, 329. pl. 17

Huſband and wife tenants in ſpecial tail, the huſband alone levies a fine to the uſe of himſelf, and deviſes the land to his wife, paying rent, remainder over; ſhe enters on his death, and pays the rent, it is a waiver of her remitter, 351. pl. 24

See BARON AND FEME, DOWER.

RENT.

A rent may not be deviſed, and being but chattel, ſhall go to executors, 5 b. pl. 1

A man made a leaſe to *A.* for life and to *B.* for years, rendering rent, to commence at *A.*'s death, who ſurrenders to his landlord, he before the death of *A.* enfeoffs *C.* *A.* dies, the rent is not extinguiſhed, 31. pl. 210

If a leaſe be made of land with a ſtock of ſheep, and all the ſheep die, Whether the rent ſhall be apportioned, 56. pl. 15

Where rent is reſerved on two feaſts yearly, it ſhall be paid on that which comes firſt, though named laſt, 130. pl. 69

Demand or tender of rent on the laſt moment of the day of payment is good, 130. pl. 69

The leſſor of land and implements with it entered on his leſſee and made a feoffment thereof, and the leſſee re-entered upon him, the feoffee may now bring debt for the whole rent, and there ſhall be no apportionment, 212. pl. 37

If tenant in tail leaſe for years, and afterwards releaſe all the rent but a ſhilling, Whether the iſſue accepting that is barred from the reſidue, 304. pl. 53

A. leaſed for years, and then deviſed to *B.* and to his ſiſter, and the heirs of every of their bodies; the ſiſter dying leaving iſſue, Whether on the death of *B.* without, the rent ſhall be apportioned to the iſſue, 326. pl. 1

Leaſe to *A.* his executors and aſſigns for the life of *B.* and livery accordingly; *A.* leaſes to *C.* for years, rendering rent, and dies, *B.* living. It ſeems that *C.* ſhall hold as occupant, and the rent is gone, 328. pl. 10

If a leaſe be made of a wood only, demand of rent muſt be made at the moſt open and notorious place in the wood 329. pl. 12

One leaſe of three manors, rendering for *A.* 5l. for *B.* 5l. for *C.* 5l. creates ſeveral rents, for which there muſt be ſeveral avowries, 308. pl. 75

Where rent is reſerved to the leſſor, his heirs and aſſigns, the heir and not the executor, is entitled to it, 362. pl. 15

A. makes a leaſe for life, rendering rent, and dies, Whether his executors, under 32. H. 8. c. 37. may diſtrain, or ſue for arrears incurred in the life of *A.* 375. pl. 10

B. tenant for life having ſurrendered one moiety, the leſſor demiſed the entire land,

land, *habendum* one moiety for life, the other for years after the death of *B.* paying 4l. a year rent for the whole; this reſervation is entire, and he may avow for the whole, though *B.* ſtill hold his moiety, 256. pl. 14

See CONDITION, ESTOPPEL.

REPLEVIN.

After withernam awarded, the writ of ſecond deliverance does not lie for the beaſts taken in withernam, but for the firſt diſtreſs, 59. pl. 14

On a non-ſuit in replevin for damage feaſant, the avowant ſhall have coſts and damages by 21. H. 8. c. 19, 141. pl. 46

To a *pluries* replevin returnable in C. B. the ſheriff returned a claim of property, the *proprietate probandâ* iſſued out of that court, 172. pl. 14

To a *pluries* replevin in C. B. the return was an *elongata*, "and no other writ;" on withernam ſued out, if plaintiff do not appear, ſince no plaint was before the ſheriff, Whether he can be non-ſuited, 188. pl. 14

And on ſuch default, Whether the defendant by ſuggeſtion of property ſhall have a ſpecial writ for the cattle taken in withernam, or a return of the firſt cattle, 188. pl. 12

Tenant by ſtatute-ſtaple may avow for a rent-charge, 205. pl 7

To a *pluries* replevin to the ſheriffs of *London*, return of a cuſtom ratified by parliament to replevy in the ſheriff's court there, and not by the King's writ, is bad; and an attachment was granted againſt the ſheriffs, 246. pl. 67

Where defendant claims property he does not gage deliverance; but the plaintiff muſt of a withernam, 189 pl. 14.

After non ſuit before declaring both on the replevin and ſecond deliverance, Whether defendant having a return irrepleviſable muſt make avowry to have an enquiry of damages, 280. pl 14

The avowant having return irrepleviſable on the ſecond deliverance may again impound the cattle, and if they die may take a new diſtreſs. 280. pl. 14

See ABATEMENT, JURORS RETURN, OF WRITS, SUPERSEDEAS.

RESCOUS.

See RETURN OF WRITS, TRAVERSE.

RESERVATION.

See LEASE, RENT.

RETURN OF WRITS.

A return to a writ of proclamation upon an *exigent* under 6. H. 8. c. 4. made by the ſheriff out of office is void, 41. pl. 8

The ſheriff to an *elegit* muſt return an inquiſition, 100. pl. 71

The ſheriff may not diſavow his return of a panel after the term of the return, although he did not diſcover ſooner that the meſſenger by whom it was ſent had changed ſome of the jurors at the plaintiff's requeſt, 182. pl. 56

In treſpaſs, the ſheriff returning to C. B. that defendant is attached by goods to ſuch a value is bad; he muſt ſpecify what things he attaches, as they are forfeited to the king on default, 199. pl. 54

On the demiſe of the crown after inqueſt taken on a writ of extent but before it was returnable, if the return and *liberate* be in the time of the ſucceſſor, Whether it is not returned without warrant, 205 pl. 7

An original not returned at the death of the King cannot be returned in time of the next King, though all proceſs upon originals not pending may, 165. pl 1

A ſheriff's return to a *ca. ſa.* of a *reſcous* made from his bailiff itinerant is bad; *ſecus* if it had been from the bailiff of a franchiſe. So on a *ca. ſa.* or *ca. utl.* after judgment; if a *reſcous* be made the ſheriff ſhall be charged, unleſs it be by the King's enemies, 241. pl. 47

If the commiſſioners who were to ſwear in the ſheriff return the writ with the oath, when it was not taken, they ſhall be fined, 168. pl. 15

To a writ of entry that the ſheriff is defendant and cannot ſummon himſelf is a good return, 266. pl. 8

See ERROR, TRAVERSE.

REVERSION.

Whether the grant of the reverſion of an office be good, 80. pl. 58

If a man ſeiſed in fee deviſe for life, the reverſion cannot be pleaded to deſcend to his ſon till after the entry of the particular tenant, 110. pl. 39

If

If the reverſion of abbey lands be pleaded to be given to the King by virtue of 31. H. 8. c. 13. without ſtating that they were previouſly ſurrendered &c. it is bad, 110. pl. 39

A reverſion is granted for life paying annually 20s. *cum acciderit*, this ſhall be intended when it comes into poſſeſſion, 376. pl. 27

See REMAINDER.

ROBBERY.

To conſtitute a robbery, there muſt be a putting in fear, 224. pl. 30

S.

SATISFACTION.

Acceptance of a leaſe at will in ſatisfaction, is a bad plea to debt on bond conditioned to render an account, 1 a pl. 1

A. gives a bond conditioned that *B.* ſhall pay 20l. to the obligee, acceptance by the obligee of an horſe in ſatisfaction, is a good diſcharge; *ſecus* if the payment had been to be made to a ſtranger, 56. pl. 18

In all caſes where nothing but amends are to be recovered, accord with execution thereof is a good plea, 75. pl. 23

Acceptance of one's own property in ſatisfaction is not a good accord, 358. pl. 40

Nor the acceptance of what is executory, as not to take effect till after the death of the party, 358. pl. 40

A man condemned in debt in C. B. removed from the *Fleet* into B. R. where he had been condemned for another debt at the ſuit of the ſame plaintiff. Satisfaction of both debts acknowledged in B. R. is good for both, 152. pl. 6

So ſatisfaction of a debt recovered in the exchequer acknowledged in B. R. into which defendant was removed by *habeas corpus* from the *Fleet*, is good, 245. pl 65

An accord cannot be executory, to commence after a death. It is not any bar unleſs executed, 356. pl. 39

The amends given by the accord ought not to be of the party's own, but muſt be ſome charge to one party, and profitable to the other, 356. pl. 39

See DOWER, PLEADING.

SCANDALUM MAGNATUM.

See SLANDER.

SCIRE FACIAS.

Upon a pardon of outlawry on an appeal of murder, defendant need not have a *ſcire facias* againſt the lords mediate and immediate, but only againſt the appellant, 34. pl. 20

In *ſcire facias* upon a recognizance there muſt be two *nihils* returned. So to have a charter of pardon of outlawry allowed. But upon judgment againſt defendant himſelf one *nihil* ſuffices, though there muſt be two againſt his executor, 168. pl. 17

Defendant pleading to a *ſcire facias* that the parties to the fine had nothing, muſt add, neither in poſſeſſion nor in uſe, conformably to the ſtatute, 215. pl. 53

A *ſcire facias* does not lie in C. B. on the tranſcript of a recognizance taken in chancery, 217. pl. 1

If a *ſcire facias* be teſted on a *Sunday* it is error, 168. pl. 17.

Where there are two patents of the ſame office, the laſt patentee may be removed by a *ſcire facias* ſued out by the firſt patentee, 198. pl. 50

But the laſt patentee ſhall not have *ſci. fa.* to repeal the firſt patent, though he ſeem to have right, 276. pl. 52

An officer of record cannot be removed even by the King for a forfeiture without *ſcire facias*, 198. pl. 50

When a *ſcire facias* to repeal a patent is ſued by the King the cauſe of forfeiture is inſerted; *contra* at the ſuit of a ſubject, 198. pl. 50.

Scire facias by the firſt patentee to repeal a ſubſequent patent of the office of parkerſhip, 197. pl. 45

So by a bailiff of inheritance to repeal a patent of that office, 198. pl. 49

Scire facias to repeal a patent of auditorſhip for not paſſing his accounts according to act of parliament, 197. pl. 46

Scire facias to repeal the patent of King's remembrancer in the exchequer, 197. pl. 47

So of ſerjeant at arms for non-attendance, 198. pl. 48

Scire Facias does not lie upon the tenor of a record, but an original writ of debt only, 369. pl. 52

After

After judgment in annuity for exerciſing a ſtewardſhip, a *ſcire facias* is brought for further arrears. It is a good plea that pending the writ plaintiff refuſed to hold a court, 377. pl. 28

A fine *come ceo* levied to *J. S.* who grants back to the conuſor for life, *with the reverſion to himſelf in tail, &c.* the iſſue brings *ſcire facias* for the tenements, which after the death, &c. *ought to remain to him*, and bad, 65. pl. 34

Fine *come ceo* levied by a man and his wife to three, who grant and render back an eſtate-tail to the wife, remainder to themſelves in tail, upon the death of the wife without iſſue; *ſcire facias* to execute the remainder in tail, 69. pl. 32

On a *ſcire facias* to have execution of a judgment by *nihil dicit* againſt the heir, &c. he is too late to plead *riens per deſcent*, 344. pl. 1

In *ſcire facias* on a judgment in an annuity for arrears, plaintiff ſhall have execution for thoſe incurred pending the writ, 377. pl. 28

See FINE, SEISIN.

SEARCH

Shall not be granted in aid prayer, but in petition of right only, 320. pl. 18

SEISIN.

Dower for one hundred acres in *L.* and *S.* and judgment for that part in *L.* only, the writ of ſeiſin muſt be ſpecial, as the quantity there is uncertain, 34. pl. 23

Whether the lord avowing for ſervices muſt allege ſeiſin within fifty years, 333 pl. 19

Seiſin within fifty years need not be alleged in *formedons*, 315. pl. 101. 278. pl. 2

Nor in *ſcire facias* upon fines, 315. pl. 101

See FORMEDON.

SLANDER.

"*W. Kemp* will within theſe two days be a bankrupt," is actionable, 72. pl. 6

"Men cannot have their cattle going upon "the common but *B.* and his children "will kill them with *B.*'s dogs," is not actionable, 118. pl. 79

"*H.* is infected of the murder, and doth "ſmell of it," are actionable words, 317. pl. 8

Slander ſpoken of the King is puniſhable under Weſt. 1. c 34. only, and not under 2. or 12. R. 2. which extend only to great men, nobles, &c. 155. pl. 19

Indictment for ſlandering the King *contra formam ſtatutorum diverſorum*, and without ſaying "whereby ſcandal might grow &c." is good, 155. pl 19

An action of *ſcan. mag.* will not lie for bringing a writ of forger of falſe deeds againſt a peer; more eſpecially while that writ is pending, 285. pl. 37

Plea of *non damnificatus* to an action for calling plaintiff a falſe thief, is bad, 26. pl. 171

Proof of calling plaintiff a thief, will ſupport a declaration for calling him a ſtrong thief, 75. pl. 21

An indictment for murder againſt *A.* is no juſtification for calling him a *murderer*, 236. pl. 26

Nor that a robbery was committed, and common fame charged him with it, a juſtification for calling him *thief*, 236. pl. 26

See DAMAGES, JOINDER IN ACTION.

STATUTE.

32 H. 8. c. 7. is a public act, and in aſſiſe for tithes need not be recited, 85. pl. 87

23. H. 6. c. 9. not being pleaded, Whether the court are *ex officio* bound to notice, that bonds given by priſoners are made in other form than is preſcribed by that ſtatute, 118. pl. 1

34. & 35. H. 8. c. 21. muſt be ſpecially pleaded, 129. pl. 65

33. H. 8 c. 2. as to treaſons committed beyond ſea, is not repealed by 1. & 2. P. & M. c. 10. §. 7. 131. pl. 75. 298. pl. 29.

33. H. 8. c. 23. with reſpect to the trial of treaſon in a foreign county is repealed, 131. pl. 75

And as to trials for treaſons within the realm, 286. pl. 45

31. H. 8. c. 13. extends to the heirs of H. 8. as well as to himſelf, 280. pl. 12

Neither 1. E. 6. c. 12. nor 1. Mar. c. 1 repeals 26. H. 8. c. 15. as to forfeitures for old treaſons, 288. pl. 55

26. H. 8. c. 13. and 5. & 6. E. 6. c. 11. extend to all treaſons whatever, 287. pl. 49

A ſaving

A saving in an act of parliament which is repugnant to the body of the act is void, 313. pl. 91

13 Eliz. c. 8. made to continue for five years, and "from then to the end of the first session of the parliament next ensuing," holden to mean the first session of a new parliament, and not the next session of a parliament then in being, 376. pl. 22

STATUTE MERCHANT AND STAPLE.

See EXECUTION.

STOLEN GOODS.

The property is not altered by the completion in market overt, of a contract made out of it, with election of after refusal in the vendee, 99. pl. 66

STRIKING IN CHURCH-YARDS.

An indictment without conviction, or outlawry, is not sufficient to subject one who strikes in a church-yard to the corporal punishment directed by 5. & 6. Ed. 6. c. 4. And Whether without sentence he stand *ipso facto* excommunicated, *quere*, 275. pl. 48

STRIKING IN COURTS.

Striking in *Westminster-hall sedentibus curiis* punished with loss of right hand, perpetual imprisonment, and forfeiture of lands and goods, 188. pl. 10

For striking in a court leet *sedente curia* the steward may impose a fine, 233. pl. 14

SUPERSEDEAS.

A writ of second deliverance is a *supersedeas* to a *retorn. habend.* sued out after, though returnable before it, 41. pl. 4

A *supersedeas* does not lie on a *mandamus post mortem*, or on a *diem clausit extremum*, but the party grieved must traverse the office, 170. pl. 2

The escheator being commanded by the writ *quod superdeat*, when it should be *supersedeat*, held that it could not be amended, 170. pl. 4

If justices in quarter-sessions grant a writ of restitution on 8. H. 6. c 9. Whether any other justice not present can grant a *supersedeas*. If at a special sessions, none can except the justices of B. R. 187. pl. 6

See CERTIORARI, ERROR.

SUPERSTITIOUS USES.

Land is given to a parson and his successors to find lights in the church; he makes a lease of it, and with the rent finds lights till the 1st of Ed. 6. c. 14. Acceptance of the rent by his successor after that statute is void, and a patentee of the King may enter, 337. pl. 38

Land given to a dean and chapter to pay thereout ten marks annually for a chantry priest is not given to the crown by 1. E. 6. c. 14. but that annual rent only, 368. pl. 47

SUPREMACY.

The importers of books written abroad against the supremacy—and the utterers of them;—they who read, and in conference approve of them;—and they who, hearing their contents, affirm them to be good;—they who secretly convey them to their friends to persuade them to such tenets;—the printers, and utterers within the realm;—and they who send out books of this nature written within the realm as books written abroad, which are bought, read, and conferred on,—are all within the danger of *præmunire* by 5. El. c. 1. But receivers and readers only, not in conference allowing them, are not within this act, 282. pl. 22

See INDICTMENT.

SURCHARGE.

If the herbage of a park be granted, and the grantee surcharge, so that the deer have no food, Whether the grantor hath any remedy, 80. pl. 59

SURPLUSAGE.

To a plea of deprivation, replication that plaintiff had appealed to the *Archbishop of C. in his prerogative court of the arches*. On a general demurrer, because the statute gives the appeal to the archbishop of the province generally, without limiting any court in particular, C. B. rejected the words *in his prerogative court of the arches* as surplusage, 240. pl. 46

SURRENDER.

A *ceſtuy que uſe* made a leaſe for twenty years, to commence at *Midſummer*; his feoffees, by his requeſt, the day after, made another leaſe of the ſame lands to the ſame leſſee for thirty four years, to commence at the ſame *Midſummer*; this is no ſurrender in the leſſee of the firſt leaſe, but a confirmation of it, and enures as a new one for fourteen years more, 57 pl. 2

Where a ſurrender is pleaded, the agreement of the ſurrenderee thereto muſt be averred, 110. pl. 39

A man makes a leaſe by deed, and afterwards enfeoffs and takes back an eſtate to himſelf and his wife in tail, and then the leſſee takes a new leaſe by parol, this is a ſurrender of the former, though the wife may avoid it after the death of her huſband, 140. pl. 43

A leaſe by a prior is made to a woman for years, who marries and dies, the leſſor grants the reverſion to the plaintiff for years, to commence from the end of the expiring of the firſt term of years; the huſband marries again, deviſes his term to his wife, and dies in poſſeſſion; ſhe alſo marries again, and with her huſband accepts a leaſe for life of the patentee in fee of the King, to whom the prior had granted the reverſion; by this acceptance the firſt term is ſurrendered and merged, and the plaintiff may, by virtue of his leaſe, enter immediately, as well as if the years had been gone by the efflux of time, 177. pl. 35

The leſſee of a meſſuage under the crown accepting by letters patent the office of the cuſtody thereof, with a fee annexed, is a ſurrender of his leaſe, 200. pl. 62

A parol agreement without livery by tenant for life that the reverſioner ſhall have his intereſt rendering rent is not a ſurrender, 251. pl. 93

A leſſee's acceptance of a ſecond leaſe is a ſurrender of his former, though he had not at the time poſſeſſion of the land, 280. pl. 13

A dean and chapter may ſurrender to the King without the conſent of the biſhop, and the corporation will be diſſolved thereby, 282. pl. 26

The reverſioner enfeoffs the tenant for life, it enures as a ſurrender of the life-eſtate, and makes a good feoffment, 358. pl. 48

See COVENANT, OFFICE.

T.

TENANT BY SUFFERANCE.

If *ceſtuy que uſe* for life, remainder over in tail, make a feoffment *pur auter vie* and die, the tenant is only by ſufferance, 57. pl. 1

If a termor after ſurrendering continue poſſeſſion and pay rent, it is optional in the leſſor to conſider him as tenant by diſſeiſin or at ſufferance, 62. pl. 34

After entry on the leſſee at will he continues poſſeſſion, Whether the leſſor accepting future rent waives the diſſeiſin, and he ſhall be ſtill tenant by ſufferance, 173. pl. 15

TENANT AT WILL.

The King having granted an eſtate for life, *if it ſhall ſo long pleaſe us*, granted the reverſion to another in fee; the reverſioner cannot determine the eſtate at will, but the King's ſucceſſor may, 94. pl. 29

If there be two leſſees at will, Whether the death of one of them determines the will, 269. pl. 20.

See CORPORATION.

TENDER.

Debt againſt executors for rent accrued after teſtator's death in the *debet et detinet*. Plea, an eviction of part of the land in teſtator's life-time, and a tender of the rent for the remainder in ſhillings; and demurrer, becauſe the ſhillings before bringing the action were debaſed by proclamation to the value of ſixpence only, 81. pl. 67

If at the time appointed for payment a baſe money be current in lieu of ſterling, tender at the time and place of that baſe money is good, and the creditor can recover no other, 82. pl. 69

Tender of the money after the day, and refuſal—Upon an after debaſement of the coin the debtor ſhall bear the loſs, 82. pl. 70

Upon

Upon rent reſerved by the King payable on demand, at a place certain, on pain of forfeiture if not paid within one month, a tender after it is due, but within the month, ſuffices, without another on the laſt inſtant, 87. pl. 104

Plea of tender at *A.* to a bond for payment of money there, without *uncore priſt* and bringing the money into court, or without *uncore priſt* to pay at *A.* is bad; *ſecus* if it had been conditioned for the performance of any collateral act, 150. pl. 84

To debt on bond, tender at the time and place, but that no one was there to receive, and *uncore priſt*, is a good plea without *tout temps priſt*, and may be pleaded after imparlance, 300. pl. 37

If money is to be paid or tendered at a place certain, but no time limited, the party muſt give notice of the time when he will make the tender, 354. pl. 32

Two proviſoes in two indentures of conveyance of two ſeveral manors to *A.* and *B.* "that if the feoffor pay or tender 20s. to *A.* and *B.* or to the heir of *A.* they ſhall be void." *A.* dies, tender to *B.* is ill; but to the heir of *A.* good; yet it muſt be of two twenty ſhillings; *ſecus* of a collateral act, 373. pl. 9

See EXECUTOR, NOTICE, PLEADING, RENT.

TENURE.

If tenant by knight ſervice make a gift in tail, reſerving rent, the donee ſhall hold by knight ſervice, and the rent, 52. pl. 3

The King having an honor, part by deſcent or purchaſe, part by attainder, tenure as of that honor ſhall not be in *capite*, 58. pl. 6

Lands holden of an honor or manor ſhall never be holden of the King *in capite*, though the honor or manor eſcheat for treaſon, 44. pl. 28

A man having jointured his wife from his ſocage lands, and deviſed two parts of after-purchaſed lands holden *in capite*, the King ſhall not have any part of the ſocage lands to ſupply the third part of the whole, unleſs covin be averred, 158. pl. 33

Office found, that *J. S.* died ſeiſed of a manor holden of the King by knight ſervice generally, the heir within age; it ſhall be intended land *in capite*. And it being alſo found in another county that he died ſeiſed of another manor holden of *A. B.* by knight ſervice, *A. B.* may traverſe the firſt manor's being holden *in capite*, 161. pl. 47.

A fine levied upon a writ of cuſtoms and ſervices, where it recited that there was a diſpute about caſtle guard and murage, and that now the lord granted that the conuſee ſhould be quit of the aforeſaid ſervices, ſaving all other ſervices; this diſcharge of murage and caſtle-guard, which it may be were not of right due, is no diſcharge of the tenure in chivalry, 179. pl. 46

The lord by chivalry releaſes to his tenant, rendering a hawk; this new reſervation is void, and tenure by fealty continues, 230. pl. 57

If a man hold a manor of the King by the ſervice of being conſtable of *England*, it is a good tenure in grand ſerjeanty, 285. pl. 39

Land holden of the King by the ſervice of finding two men with two oars to row over and beyond ſea whenever it ſhall pleaſe the King in perſon to paſs beyond ſea, is not grand ſerjeanty, 285. pl. 39. note

The feoffee of tenant *in capite* before the ſtatute of *quia emptores* making a feoffment over to hold of his feoffor by a rent for all ſervices, clearly makes no tenure *in capite*, and the firſt meſnalty is holden only by knight ſervice, 299. pl. 33

If on a *melius inquirendum* after 2. Ed. 6. tenure be found of the King as of a manor, *ſed per quæ ſervitia juratores ignorant*, it ſhall be taken for knight ſervice, 306. pl. 64

He who holds by the moiety of a knight's fee ſhall be intended to hold by knight ſervice, unleſs found otherwiſe, 329. pl. 15

Tenure of the Queen by the ſervice of going to the wars at her charge is no tenure *in capite*, though found ſo by office, 345. pl. 3

The tenant of a manor in ſocage obtaining a releaſe of his lord who holds over *in capite*, ſhall himſelf now hold *in capite*, 359. pl. 1

See CONVEYANCE, EXTINGUISHMENT, INQUEST OF OFFICE, OFFICE, WARDSHIP.

TERM.

See DEVISE, MAINTENANCE, REMAINDER.

TITHES.

If the parſon purchaſe a manor within his pariſh, unity of poſſeſſion diſcharges it of tithes; but when the poſſeſſion is ſevered, they revive, 43. pl. 21

He who hath the inheritance of the *Ciſtertians*, *Templars*, and *Hoſpitallers*, is diſcharged from tithes, but his leſſee or farmers ſhall pay them, 277. pl. 60

See ASSISE, PROHIBITION.

TRAVERSE.

To an action of detinue on an abſolute contract defendant may plead, that the contract was conditional, without a traverſe, 30. pl. 201

In aſſiſe, the writ being of a freehold in *C.* and the plaint of one meſſuage &c. Whether defendant pleading that the tenements were in *H.* muſt traverſe their being in *C.* 78. pl. 43.

In *quare impedit*, the plaintiff claiming the church *as in groſs*, and ſetting out a preſentation from the perſon under whom he claimed, Whether defendant claiming the church *as appendant* muſt traverſe that it is in groſs, or the preſentation, 78. pl. 44

If one party plead an aſſignment, and the other reply a ſurrender, he muſt traverſe the aſſignment, 110. pl. 39

The King licenſes *A.* to go beyond ſea for a certain purpoſe, provided, that if he converſes with fugitives the licenſe ſhall be void; by privy ſeal he commands his return; the meſſenger certifies a converſing with fugitives into chancery, which is ſent into the exchequer, and his land is ſeized, this certificate is not traverſable, 176. pl. 30

Traverſe for a chain, which defendant knowing &c. ſold, and the money converted. Plea traverſing the ſelling, and concluding with a verification, is bad, 121. pl. 14

Executors renounce; the adminiſtrators appointed bring debt, and in the count ſuppoſe an inteſtacy, Whether this may be traverſed, 236. pl. 27

Traverſe that a manor is not defendant's freehold admits it to be a manor, which therefore need not be proved, 183. pl. 58

If the ſheriff return a *reſcous* the party is entitled to traverſe it, 212. pl. 36

In a writ of intruſion of ward the marriage not ſatisfied; plaintiff having alleged a tender of marriage, defendant may traverſe it, 255. pl. 6

Avowry damage feaſant in defendant's freehold, Whether plaintiff pleading coparcenary with the defendant muſt traverſe the ſole ſeiſin, 280. pl. 15

Avowry for a rent-charge ſtating the grantor ſeiſed in fee. Plea that it was an eſtate-tail ſhould traverſe the ſeiſin in fee, 312. pl. 90

In deceit againſt an attorney for appearing to an action without warrant, and by covin pleading *non eſt informatus*. Plea that the action was againſt the plaintiff and *B.* jointly, and that *B.* retained &c. muſt traverſe the covin, 361. pl. 13

In replevin, on the queſtion who ought to keep the incloſures, the avowant ſtated himſelf to be ſeiſed in fee, though he needed not to have ſet out any particular eſtate, but generally that he was ſeiſed of the cloſe, yet having done ſo the preciſe eſtate is traverſable, 365. pl. 32

In *ejectione firmæ* ſuppoſing a demiſe by *C.* plea that before *C.* had any thing *B.* was ſeiſed in fee and enfeoffed *A.* who died ſeiſed, and his ſon leaſed to defendant, who was poſſeſſed till ouſted and the ſon diſſeiſed by the ſaid *B.* who afterwards enfeoffed the ſaid *C.* who demiſed to plaintiff. Replication proteſting againſt the feoffment to *A.* and the dying ſeiſed, may traverſe the diſſeiſin, though the feoffment or dying ſeiſed might both be traverſed at the election of plaintiff, 365. pl. 34

Avowant makes title by deſcent, as collateral heir of *P. eò quòd* the ſaid *P.* died ſeiſed without iſſue. Plaintiff claiming by deviſe from *P.* muſt traverſe the dying ſeiſed, for the deſcent is not traverſable, 366. pl. 36

In favorem vitæ an averment may be againſt a ſheriff's return, 349. pl. 14

See PRESENTMENT, TENURE.

TREASON.

Where two conſpire to commit treaſon, and one only executes it, both are traitors, and this at common law before the ſtat. 25. E. 3. ſt. 5. c. 2. 98. pl. 56

One

One witneſſing of his own knowledge, and another by hearſay from him, though at the third or fourth hand, are two ſufficient witneſſes in high treaſon, 99. pl. 68

Whether a ſervant letting in a felon by night, leading him to her miſtreſs' bed, and holding the candle while he murders her, but not ſaying or doing anything, be a principal; and Whether it be petit treaſon in her, 128. pl. 57

Knowingly to receive the maker of falſe coin is not treaſon, but miſpriſion of treaſon, 296. pl. 21

A ſubject conſpiring abroad for the invaſion of this kingdom, though it is not put in execution, is guilty of treaſon by compaſſing the King's death, and ſhall be tried according to 35. H. 8. c. 2. 298. pl. 29

If on a proclamation of enmity for receiving and protecting rebels a ſubject procures money to be ſent from a foreign prince to the receivers or rebels, though it is intercepted, it is treaſon. So if he conveys or diſtributes ſuch money among them, 298. note (*a*)

If a known ſubject of this realm indicted for treaſon plead that he is a liege ſubject of another King, and refuſe to anſwer to an indictment, he ſhall have judgment as if convicted, 330. pl. 38

See ALIEN, FORFEITURE, JUDGMENT, OUTLAWRY,

TRESPASS

Or the caſe will not lie againſt the maſter of a dog which has killed ſheep, unleſs he knew it to be miſchievous, 25. pl. 162

If a dog kill ſheep without his maſter ſetting him on, to treſpaſs for that killing he needs only plead the general iſſue, 29. pl. 195

In treſpaſs and juſtification under a freehold in *A.* replication that *B.* long before ſeiſed in fee, enfeoffed the plaintiff, whom *A.* diſſeiſed; that afterwards he re-entered, and continued ſeiſed until &c. is bad, 134. pl. 10

That a robbery was committed, and common fame charged the plaintiff with it, is a good juſtification to treſpaſs for apprehending and carrying him to priſon, 236. pl. 26

Whether treſpaſs *de uxore raptâ et abductâ cum bonis viri* may be brought in any other county than where the abduction was, 256. pl. 10

See PLEADINGS.

TRIAL.

Where the iſſue is matter of ſpiritual cognizance mixt with a temporal matter, it ſhall be tried by a jury, and not by the ordinary, as an avoidance of a church by reſignation, 228. pl. 48

The parties at the trial are demandable firſt, and on default the plaintiff ſhall be nonſuited, or an enquiry awarded by default againſt the defendant, though a full jury do not appear, 265. pl. 1

So in C. B. at the return day of the *habeas corp. jur.* though the ſheriff do not return the writ, 214. pl. 45. 286. pl. 44

If one of ſeveral iſſues be a jeofail the other ſhall be tried by the ſame jury, but there ſhall be a new *venire* to try the new iſſue, 272. pl. 33

Trial by the panel returned on a *venire cum proviſo*, on which the plaintiff ſued an *hab. corp jurat.* when the firſt *venire* was alſo returned, is aided by the ſtatute of Jeofails, 284. pl. 34

Trial by battle, the ceremony, 301. pl. 40

Treaſon committed in *Ireland* by an *Iriſh* peer cannot be tried in *England*, 360. pl. 6

Though miſ-trial is not aided by the ſtatute of Jeofails, it is cured by aſſent of parties, 367. pl. 40

See ASSISE, COUNTY, PERJURY.

TROVER.

See PLEADING, TRAVERSE.

V.

VARIANCE.

A ſecond leaſe which recited a former one under a falſe date being pleaded, and the true date alleged in the pleading, is good on *non demiſit modo et formâ*, and the variance immaterial, 116. pl. 70

The cuſtom of a manor pleaded to be, that the widow of every copyholder ſhall enjoy the eſtate *pro termino vitæ*; evidence that it is *pro viduitate tantùm* is a fatal variance, 192. pl. 23

The

The appearance of the parties being entered on the plea roll, but an eſſoin for defendant on the ſame day and a nonſuit for default of the plaintiff's appearance entered on the eſſoin roll, the plaintiff may proceed to judgment, for the record of appearance by the plea roll confounds the eſſoin, 223. pl. 27

Attaint by *J. S. knight*, where the writ in the original action was *J. S. of D.* is an immaterial variance, 25. pl. 161

Conſanguinity of the ſheriff to defendant given as cauſe of challenge, and afterwards ſtated to be to his wife, is immaterial variance, 37. pl. 46

A variance not in the ſubſtance of their name will not vitiate a leaſe made by a corporation; as by the *dean and chapter of the cathedral church of the Holy and Undivided Trinity of Carliſle*, under the name of *dean of the cathedral church of the Holy Trinity in C. and the whole chapter of the church aforeſaid*, is a good leaſe, 278. pl. 1

In the writ and count in covenant the plaintiff was called *A. B. aſſignee of C.* in error afterwards he was called *A. B.* only. It is his whole name, and the want of that addition immaterial, 256. pl. 41

See EVIDENCE, VERDICT.

VALOR MARITAGII.

See WARD.

VENDOR.

See STOLEN GOODS.

VERDICT.

Declaration on a demiſe of twenty ſix acres. Plea that the twenty-ſix acres were demiſed, and four acres more, traverſing the twenty ſix acres only; the verdict finds a demiſe of twenty-one only, Whether the plaintiff ſhall recover, 32. pl. 7

Where the jury find the facts at large, and further conclude againſt law, the verdict is good, and the concluſion ill, 106. pl. 20

In debt on bond for performance of covenants, breach that he cut down twenty oaks; plea that he did not cut down twenty oaks, or any of them. A verdict that he cut ten will ſupport the declaration, 115. pl. 67

Treſpaſs in three acres; the jury find in open court, as to one for the plaintiff, for defendant as to another, but not agreeing as to the third were ſent back, and at night gave a privy verdict for plaintiff in all, yet in the morning they affirm it for the third only, without noticing the alteration of the firſt verdict, yet the plaintiff had judgment for all, 204. pl. 3

Where the jury give a privy verdict at night, and on the morrow give an open verdict in court contrary to their privy verdict, the open verdict ſhall be good, and the firſt void, 209. pl. 21

Where a ſpecial iſſue is joined the jury may not find a ſpecial verdict, 114. pl 61. 118. pl. 77. 283. pl. 32

Debt on bond againſt an heir; iſſue joined on aſſets in one county; Whether the jury may find aſſets in another, 272. pl. 29

A merchant having paid the cuſtoms for goods exported, but which were loſt by tempeſt, was permitted by the deputy of the cuſtoms to ſhip as many more duty free. Upon an information againſt him, and iſſue joined on the concealment and ſubtraction of the cuſtoms, if the jury mean to acquit defendant, they ſhould find that the cuſtoms were not concealed or ſubtracted againſt the form &c. as defendant hath alleged, 43 pl. 22

In aſſiſe of an office, Whether a preſcription pleaded *in quælibet perſonâ quæ nominata fuit* by *A. B.* is ſupported by a verdict finding a nomination of two, 149. pl. 81

The plaintiff making title by a nomination of himſelf to the office, a verdict finding the nomination of himſelf and another for their lives, and that plaintiff is in by ſurviverſhip, will not ſupport it, 149. pl. 81

In caſe, and *non aſſumpſit* plea ed, if the jury find "*non aſſumpſit*, nevertheleſs "if *A* ſwear true, as we think he does, "then we find that he did aſſume;" and refer it to the Court; this is a perfect verdict, and the laſt part void, becauſe not expreſsly found, 372. pl. 7

A ſpecial verdict finds, that executors received rent reſerved to the teſtator, *his heirs and aſſigns, iſſint aſſets*; holden that

that the *iſſint* is void, and the heir intitled, 362. pl. 15

See ATTAINT, JURY.

VIEW.

In aſſiſe of the office of filazer, the poſt where he ſits ſhall be put in view, 114. pl. 63

In dower againſt ſeveral defendants, if ſome confeſs the action, the others are not entitled to a view, 179. pl. 41

A view cannot be had after a ſpecial imparlance, 210. pl. 27

VILLEIN.

Villenage regardant being in iſſue, villenage in groſs cannot be given in evidence, 48. pl. 1

If tenant in tail of a manor with villeins regardant enfeoff one of them of one acre, parcel &c. the iſſue cannot ſeize the villein till the acre be recovered, 48. pl. 4

One having a manor with a villein *regardant* makes a feoffment of one acre by the words, *I have given one acre &c. and beſides I have given J. S. my villein:* he paſſes as *in groſs*, 48. pl. 2

The lord having let an hundred years paſs without reclaiming his villein or his iſſue, cannot after that ſeize them, 266. pl. 11

See FEOFFMENT, PLEADING.

VISITOR.

Appeal does not lie for the preſident of *Magdalen College, Oxford*, from ſentence of deprivation by the viſitor, 209. pl. 20

VOUCHER.

The vouchee dying before he enters into the warranty, the tenant may revouch at large the ſon and heir if of age, *aliter quære*. 7. pl. 7

Tenant in ancient demeſne may vouch into the county, if the vouchee have nothing within the ſigniory by which he can be ſummoned, 69. pl. 35

In a *formedon* againſt *baron and feme*, ſhe, received on default of her huſband, may vouch another to warranty, 298. pl. 28

If a *feme covert* tenant by receipt in *formedon* vouch, it is no counterplea that ſhe has nothing but jointly with her huſband, 341. p. 51

A counterplea of jointenancy of himſelf or his anceſtors with *J. S.* ſhould expreſsly allege between which anceſtor by name and *J. S.* or that it is the vouchee himſelf; and that the jointenancy continues, 341. pl. 51

In *formedon*, the tenant vouching an infant as couſin and heir, muſt ſhew how couſin, 79. pl. 47

In *formedon*, the tenant vouches *C.* as ſon and heir of *A.* the ſon and heir of *B.* Counterplea, that *B.* the grandfather, or any of his anceſtors, never had &c. is bad, without alſo counterpleading the ſeiſin of *C.* himſelf, unleſs he were vouched as within age, and the parol prayed to demur, 290. pl. 62

That the tenant by receipt levied a fine to a ſtranger pending the writ, is no good counterplea, for the demandant is eſtopped by his writ to ſay that he is not tenant, 341. pl. 51

If the vouchee in *formedon* enter into the warranty as he who hath nothing by deſcent, without demanding the lien, iſſue that he hath aſſets by deſcent is triable immediately, before the plaintiff counts againſt him, 367. pl. 41

U.

USAGE

Cannot give authority to a court which had no right to act before, by reaſon of the words "*as they might have done* and "uſed to do," 243. pl. 54

See EXTINGUISHMENT.

USES.

Ceſtuy que uſe before the ſtat. of Uſes levied a fine to a ſtranger in fee, who granted it to the King; the feoffee to the uſe after the ſtatute hath no intereſt, ſo cannot ſue a petition of right to the King to revive the uſe, 88. pl. 109

Ceſtuy que uſe deviſes that his feoffees ſhall make eſtate; the uſe changes immediately, 96 pl. 40

The grandfather and father in conſideration of the ſon's marriage covenant that lands, immediately after their deaths,

deaths, ſhall deſcend and come to the ſon in tail, and that the grandfather ſhall enfeoff to thoſe uſes. The marriage was had, and feoffment made accordingly; Whether the ſaid uſe was in the feoffees in tail by this indenture, 101. pl. 79

If *A.* and *B.* his eldeſt ſon enfeoff to the uſe of *A.* to the uſe of his youngeſt ſon for life, provided that he permits *B.* to make leaſes, remainder to the uſe of *A.* in fee. Whether a leaſe made by *A.* for twenty-one years be good, 114. pl. 62

A. covenants by indenture to aſſure lands to *B.* her ſon-in-law in fee, to the uſes hereafter-mentioned, *B.* covenanting to make back an eſtate for life, remainder to himſelf and wife in ſpecial tail, remainder to the wife in fee, no uſe was declared, afterwards a recovery was ſuffered, but no eſtate being made back the uſe ſhall not be changed by the indenture, 162. pl. 48

A. makes a feoffment in 8. H. 7. to the intent of performing his will; afterwards by indenture he declares his will to be, that the feoffees ſhall ſtand ſeiſed to the payment of his debts, and afterwards convey back an eſtate-tail to him and his wife:—no re-conveyance being ever made by the feoffee, this uſe is not changed, and the feoffees hold to the uſe of the heirs-general of *A.* 166. pl 8. 324. pl. 37

A man before the ſtatute of Uſes enfeoffed his wife and others to the uſe of himſelf and wife for life &c. On his death after the ſtatute, Whether the wife ſhall be in poſſeſſion under the feoffment, or by force of the ſtatute, 200. pl. 59

Land is given to two, *habendum* to them for their lives, to the uſe of *A.* for his life: if the two leſſees die, the uſe to *A* is determined, 186. pl. 1

Ceſtuy que uſe in tail before the ſtatute of Uſes ſuffered a common recovery, and died; the ancient feoffees may enter, or have an action to revive the uſe for the remainders, 274. pl. 39

A parol promiſe in conſideration of a ſon's marriage that he ſhall have the land after his father's death will not raiſe an uſe to the ſon, 296. pl. 22

An uſe by deed may be averred againſt the implied uſe of a fine *ſur grant et render*, 312. pl. 84

Conveyance to the uſe of *A.* and *B.* his wife for life, remainder to *C.* in tail, remainder to *A.* in fee, provided if *A.* have iſſue of his body, or any wife of *A.* at his deceaſe be *enceinte* by him, then after ſuch iſſue had to *A.* in tail, and in default, to him in fee. *B.* dies, *A.* marries again; yet before the performance of the contingency *A.* has no longer eſtate than he had before, 314. pl. 96

Ceſtuy que uſe in tail before the ſtatute of Uſes made a feoffment to himſelf, remainder to his ſon and his wife in tail, and after the ſtatute died, the feoffees cannot enter to revive the ancient uſe, 329. pl. 17

A leaſe for years aſſigned to an uſe is not executed by the ſtatute, 369. pl. 50

See ASSETS, CONSIDERATION, DISTRESS, ESTATE, LIVERY, WARD, WILL.

USURY.

An information for uſury commenced by *ſubpœna* in C. B. and concluded *contra formam ſtatuti*, without ſaying what ſtatute. And defendant appeared by attorney *ex gratiâ*, and pleaded not guilty; yet on the verdict found againſt him, judgment was ordered to be entered accordingly, 346. pl. 9

See NEGATIVE PREGNANT.

W.

WAGER OF LAW.

In account by executors of a receipt by the hands of the teſtator, defendant cannot wage his law, becauſe that is by other hands, 183. pl. 60

To an information againſt the King's receiver for arrears of his account before auditors, he cannot wage his law, 145. pl. 63

In account, defendant having waged his law cannot afterwards waive it in part and confeſs the action as to that, but perform it for the reſidue; but he may waive the whole, and plead to the country, 265. pl. 2

WAIF.

See ESTRAY.

WAIVER.

See REMITTER.

WALES.

Since 27. H. 8. c. 26. the proviſions of 23. H. 6. c. 14. extend to *Wales*, 113. pl. 57

A cuſtom in *Denbigh* that a *feme covert* may by ſurrender alien her land there, is not abrogated by 27. H. 8. c. 26. 363. pl. 26

WARDSHIP.

The heir of *ceſtuy que uſe* in fee, where the feoffees to the uſe had made an alteration of the firſt uſe by adding a particular life, ſhall not be in ward living the particular tenant, 7. pl. 11

Tenant *in capite* before the ſtatute of Uſes ſuffers a recovery to the uſe of *A* his ſon, and his wife, and the heirs of *A.*'s body. After the ſtatute *A.* has iſſue and dies, the iſſue ſhall not be in ward to the King during the life of his grandfather, 54. pl. 1

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THE

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TO THE

REPORTS

OF THE

LORD DYER,

LATE CHIEF JUSTICE OF THE COMMON BENCH.

[FROM THE LAST EDITION.]

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